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HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics are present History.—*Freeman*

VOLUME XIV

BALTIMORE, SLAVERY,
AND
CONSTITUTIONAL HISTORY

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XI-XII

Causes of the Maryland Revolution of 1689

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History is past Politics and Politics are present History.—*Freeman*

FOURTEENTH SERIES.

XI-XII

CAUSES OF THE MARYLAND REVOLUTION OF 1689

BY FRANCIS EDGAR SPARKS, A. B.

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CAUSES OF THE MARYLAND REVOLUTION OF 1689.

CHAPTER I.

INTRODUCTION.

The Maryland Revolution of 1689 has always been the source of much trouble to Maryland historians. They are at a loss to explain how it was possible for a few men to upset the Proprietary government with such ease when, as they maintain, that government was universally beloved by the people. With (according to their statements) no serious disorders for thirty years, good and efficient administration, a popular Proprietor, religious liberty and good laws, it is puzzling to see why Maryland should have rebelled against the Proprietary government. But it is not true that such a happy condition of affairs existed either in 1689 or in the thirty years preceding. It is the truth of this statement that it is our intention to prove.

What then were the causes of the revolution? It is usually said that the people were deceived by a few men into a belief of a plot by the Catholics to massacre the Protestants by means of a pre-arranged Indian invasion. The alarm caused by this rumor occasioned an armed uprising under these men, and they used the power thus acquired to overthrow the Proprietary government that they might aid their personal ambitions and interests.

The fault of this explanation is that it does not explain. If the great mass of the people were devotedly attached to the Proprietor, and that Proprietor's government was so prosperous and happy, it is difficult to believe that a handful of men of no reputation could overthrow that government by an Indian scare and with but little resistance.

The real causes of the revolution lie deeper than this. They are the outgrowth of the thirty years preceding 1689, and are to be traced in the history of that period, which has never been given the proper amount of attention; its constitutional side has been almost entirely neglected. The whole interval has been disposed of in a very few pages. This is the happiest period of Maryland's colonial history, it is said, and as "those nations are happiest that have the least history," the uneventful nature of the period is supposed to be fully explained.

The Proprietor's residence in the colony during much of this period is cited as a reason of the colony's tranquillity and happiness. The actual residence of the Proprietor in the province was indeed a test of the Palatinate organization of the government. That it was such a successful test is quite another matter and cannot be so freely affirmed. This period was that of the most thorough organization of the Palatinate system ever attempted in America, and here, as in the Carolinas and New Jersey, the system seems not to have been what the people desired. Indeed it is this system that is attacked by the revolution more than anything else.

The Palatinate form of government—taxation, the interference of the Proprietor in the election of the Assembly and his forcing legislation and disregard of the same, the filling of administrative, judicial and legislative offices by the same persons, the favoritism shown to relatives of the Proprietor, his attempts to regulate fees, and harsh treatment of those in opposition—were complained of by the colonists, as will be shown. That the immediate cause alleged, namely, the opposition of the Proprietary government to the claims of William of Orange and its support of James II., was true, there can scarcely be a doubt.

The attempt will also be made to show that Maryland has been greatly influenced by the events occurring in Virginia and England. The influence of Virginia is especially marked. Bacon's Rebellion, the arbitrary government in Virginia, the rumors of Papist plots, the resistance to

the introduction of Roman Catholicism in both England and Virginia, the famous English Popish Plot, and the English Revolution of 1688, all affected the course of events in Maryland.

The period extending from 1658 to 1689 is the object of our consideration. It is necessary to inquire first what was the constitution of Maryland in 1658 before proceeding further.

CHAPTER II.

The Constitution of Maryland, 1658.

Introductory.—The era of Maryland history extending from its settlement to 1658 was one of continual change and experiment. The constitution of the Assembly and Council, the powers of the Governor and other officers, were never fixed, and the constitutional structure varied continually. The colony had fallen on evil days. The great contest of Crown and Parliament was on the eve of breaking out in England when the foundations of the Maryland colony were laid. Until 1658 this contest was the cause of frequent disturbances in Maryland. The disturbances caused by Claiborne and Ingle, the jealousy of Virginia, the weakness of the colony, and its disputed title, had all been disturbing factors. In 1650 the Virginia Puritans migrated to Maryland, and a few years later they overthrew the Proprietary government and established a government similar to the then existing English Commonwealth. This revolutionary government lasted, however, but a few years, Lord Baltimore having gained the good-will of Cromwell. In 1658 the government of Maryland was firmly established by Cromwell's directions, and the constitutional structure at last attained a point of stable equilibrium.

At the beginning of the colony the Proprietor had proposed a series of laws to be passed by the Assembly.[1] The Assembly refused to accept these as laws;[2] but, from the character of the laws it did consent to pass, we may believe them to have embodied practically the ideas of the Proprietor. The system of government established was that of the County Palatinate, having all that is characteristic of that system. Many of the provisions were never put into

[1] I. Assem. 6.

[2] I. Assem. 9.

effect, especially those creating differences in rank and privilege. Twenty years of actual existence caused many modifications. A certain governmental system gradually evolved. What was the constitution of the colony in 1658?

The Proprietor.—By the terms of the charter granted to Lord Baltimore, the Proprietor was to hold the grant in free and common socage and with all the rights and privileges "as any Bishop of Durham in our kingdom of England ever heretofore had held, used or enjoyed, or of right ought or could have, use or enjoy." This made the Proprietor a Palatine—a subject to be treated later. The powers of the Proprietor at this period were the same as given him in the charter, with but few modifications. The most important of these was the resignation by the Proprietor of his right to initiate all legislation, but through the Council, or more directly, he presented the laws he wished to have passed. The veto right was retained by him, and it could be exercised at any time after the passage of a law. He had also the control of elections and representation. He fixed the time and place of meeting, the time of adjourning and proroguing the Assembly.[1] He could make ordinances not affecting the rights of "freeholds, goods or chattels." No laws, however, could be contrary to reason, and all were to be as near as possible to the laws of England.

The Proprietor could create and fill offices, incorporate towns and ports of entry, hold courts of justice, inflict punishment of life and limb, pardon offenses, set off counties and local divisions, collect customs duties if laid with consent of the Assembly, make war against Indians or other internal enemies by land or sea, raise and maintain troops, appoint officers for the militia, fortify his possessions, and declare martial law whenever he thought it necessary. The Proprietor could grant land in fee-simple, fee-tail, for life, lives, or years, to be held by such customs, rents or services as he chose. The statute of *Quia Emptores*,[2] which forbade subinfeudation in England, was not to apply in Maryland.

[1] I. Assem. 259, 243, 369, etc.

[2] 18 Edward I.

All writs, mandates and proclamations were issued in the Proprietor's name. Everything was the Proprietor's. He was more a sovereign in Maryland than the king was in England. Such privileges as granting "titles of honor not used in England" were not exercised, and attempts to create a class of Lords of Manors were only fairly successful. The Proprietor transmitted most of these powers, except his veto, to officers in the colony, but he always maintained an oversight of all that was done.

The Governor.—The Governor was appointed by the Proprietor and was his deputy, as shown by the title "Lieutenant-General," by which the Governor was usually called.[1] As deputy he had the general powers of the Proprietor, having full executive powers in peace or war. Possessing such great powers, the Governor was generally a member of the Calvert family, as indeed were many other high officers of the colony, although occasionally some prominent resident of the colony was chosen Governor, as in the case of 1658.

Up to this period the Proprietor had not, for any considerable time, played the rôle of absolute Governor. The earlier commissions to the Governors stated in the fullest manner their powers and duties.[2] It was now stated that the appointed Lieutenant General was to have all the powers and privileges that the Lieutenant General preceding him had enjoyed.[3] The commission was read in the Council and recorded by the Secretary, who then took the Governor's oath of allegiance to the Proprietor.[4]

The commission created him Lieutenant General, Chief Governor, Admiral, Chief Captain and Commander on land and sea, Chancellor, Chief Justice and Chief Magistrate.[5] He could veto any law, and his assent was necessary to make a law valid.[6] He could not assent to any law repealing a law already, or to be enacted by the Assembly and to which

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[1] I. Council, 49, 109, 152, 160, 202, 323.
[2] I. Council, 49, 151, 201. [3] I. Council, 323. [4] I. Council, 209, 330.
[5] I. Council, 202, 203. [6] I. Council, 203.

the Proprietor had assented, nor to any law establishing or changing any officer.[1] He could not give his assent to any law imposing fines, forfeitures or confiscations to be paid to any but the Proprietor, nor to any law concerning religion, the establishment of parishes, payment of tithes, oaths to be taken by the people, treasons, matters of judicature, or anything which might infringe upon or prejudice the rights or prerogatives of the Proprietor.[2] Any such laws required a special warrant from the Proprietor.[3]

The Governor presided as Chief Justice over the Provincial Court and could grant pardon for any offense except treason.[4] He was empowered by his commission to propound and prepare wholesome laws and ordinances for the Assembly, and also to issue in the Proprietor's name "ordinances, edicts and proclamations," with penalties not extending to loss of life, limb or property.[5] He also published all laws.[6] He designated the public ports and the officers there to be employed, as also the places and dates for the holding of markets and fairs.[7] He was keeper of the Great Seal, and granted all writs, processes and commissions for the execution of justice, the dividing and bounding of lands, licenses, and all public deeds and acts whatsoever.[8] He could nominate two or three councillors, subject, however, to the confirmation of the Proprietor.[9] Nearly all of the subordinate officials were appointed directly by him. He was commander-in-chief of the militia, and as such appointed all subordinate military officers. The Governor held his office at the pleasure of the Proprietor and could be superseded by another appointee at any time.[10] He could appoint an acting Governor whenever he was absent or dying. Such appointments often occurred.[11] If the Governor died or withdrew from the colony without naming an

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[1] I. Council, 203. [2] I. Council, 203, 204. [3] I. Council, 204.
[4] I. Council, 203, 205, 206, 207. [5] I. Council, 203, 205.
[6] I. Council, 204. [7] I. Council, 205. [8] I. Council, 205.
[9] I. Council, 208, 323. [10] I. Council, 202, 323.
[11] I. Council, 160, 207, 241, 255, and many others.

acting Governor, the Council could elect such an officer, but he must be a member of the Council and reside in Maryland.[1] This point had once been the cause of some contention.[2] The salary of the Governor appears to have been paid by the Proprietor.[3] The amount cannot be stated, nor do we know just how it was paid. Sometimes the Assembly made an especial gift or grant to the Governor.[4] Usually in this early period he was given a large grant of land by the Proprietor.

The Council.—The members of the Council were appointed by the Proprietor and held office at his pleasure.[5] The Secretary was a member *ex officio*, and so was the Governor, who presided. The Surveyor General was usually a member. The number of the Council at this date (1658) was about ten, although previously it varied from six to ten and was never fixed.

New commissions to councillors were generally issued whenever a new commission was issued to a Governor. The oath of allegiance to the Proprietor was administered to the Council by the Governor in a formal meeting.[6] All meetings were subject to the call of the Governor. The Council was advisory, legislative and judicial. As an advisory body it assisted the Governor in the execution of the laws, the appointment of officers, and on questions of war and peace. It was virtually the cabinet of the Governor. As a legislative body it acted from this time as an Upper House, and its consent was necessary to every law. Prior to 1650 the members of the Council had been also members of the Assembly, which, with the exception of the session of 1646, had only one house. The united opposition of the Council to any bill might not prevent its passage nor insure the veto of the Governor. The Puritans had only one house during their term of power, but the Assembly in 1658 returned to the division into two houses, which has never since been changed.

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[1] I. Council, 207. [2] I. Council, 188. [3] I. Assem. 416.
[4] I. Assem. 296. [5] I. Council, 211, 212. [6] I. Council, 213.

With the Governor, the Council, without the assent of the Assembly, could pass ordinances not affecting the life, liberty or property of freemen. By this power the Council established counties[1] and hundreds, imposed embargoes and remodeled public offices.

As a judicial body the Council at first dealt with all legal questions, but by this time it considered, in the first instance, only the more important cases, as the Provincial Court, of which the Governor was *ex officio* chancellor. It also sat as a Court of Appeals, where all cases of importance were sure to come. It also sat as a Court of Chancery and as a Court of Admiralty. The Council, with the Governor, levied assessments on the colonists in accordance with acts passed by the Assembly.

The Assembly.—The Assembly until 1650 had been unicameral, although an Upper House is mentioned in 1646.[2] Except during this session, the Governor, the Council, and the freemen, or their representatives, had sat in one house until 1650, when the Assembly was divided into two houses.[3] Under the rule of the Puritan Commissioners, the Assembly had been composed solely of the representatives of the freemen, for there was neither Proprietor nor a Proprietor's Council during this period. When the Proprietor regained his power, his Council was restored and resumed its position as the Upper House of the Assembly. The division of the Assembly may, therefore, in one sense be regarded as continuous from 1650, although it was not fully established until 1658. The Assembly had three branches—the Governor, the Council, and the representatives of the freemen.

The Governor summoned the Assembly whenever he thought fit, although triennial Assemblies had early been desired,[4] and the Puritans had passed a law to that effect.[5] Writs for the election of members were issued by the Governor "by the advice and consent of the Council."[6] These

[1] I. Council, 308. [2] I. Assem. 209. [3] I. Assem. 272.
[4] I. Assem. 75. [5] I. Assem. 341. [6] I. Assem. 381.

writs were addressed to the sheriffs of the different counties,[1] directing them to assemble their respective freemen and elect burgesses for the Assembly, and by a fixed time make return of writs to the Secretary's office.[2] The Governor then issued a proclamation summoning the Assembly to meet at a certain time and place. The members of the Upper House were summoned by special writs addressed to each member.

When the Assembly met and organized, a Speaker was chosen by the Lower House,[3] and he was approved by the Governor. The Clerk and other officers of the Lower House were appointed by the Governor. The Secretary was the Clerk of the Upper House.

In the early Assemblies (for example those of 1638, 1640, 1642) the quorum had been fixed at ten members,[4] but now it was a majority of the members chosen. Any member absenting himself without giving sufficient reasons for so doing was fined.[5] As far as possible the procedure and customs of the English House of Commons were followed by the Lower House in Maryland. In the Upper House the Governor presided. It was composed of the Secretary, the Surveyor General, and the councillors summoned by special writ.[6]

The Proprietor had relinquished his claim to initiate all legislation, but he still presented laws to the Assembly for its approval,[7] and they were often passed. The Proprietor could withhold his assent from an act indefinitely, or he could veto any act. He was thus able to nullify legislation whenever it pleased him. The Governor could prorogue and dissolve the Assembly, though it had once declared that it should only be prorogued or adjourned by its own consent,[8] and on another occasion had protested against the exercise of these powers by the Governor.[9] When the Proprietor was present he exercised all the powers of the Governor. He presided in the Upper House, and forced the

[1] I. Assem. 260, 369. [2] I. Assem. 381. [3] I. Assem. 261.
[4] I. Assem. 91. [5] I. Assem. 274. [6] I. Assem. 202, 381.
[7] I. Assem. 275, 278. [8] I. Assem. 117. [9] I. Assem. 180.

passage of such legislation as he wished, or defeated any measure displeasing to him. The Upper House was composed of the Proprietor's creatures and did whatever he wished. The Governor disputed the right of the Lower House to expel any of its members.[1] The expenses of the delegates were generally levied upon their respective counties.[2] St. Mary's City was the usual place of meeting.

The Judicial System.—This comprised the Provincial Court, the Court of Chancery, the Admiralty Court, the Council as a Court of Appeals, and the County Courts. These courts, with the exception of the County Courts, which had small powers, were composed of nearly the same members. The Provincial Court, sitting also sometimes as a Court of Chancery and sometimes as an Admiralty Court, is the court here to be considered. The members belonged to the Council, which included all the chief officials of the provincial government. Thus the Council, itself the creation of the Proprietor, combined the executive, judicial and a large part of the legislative functions. The Governor presided over this court as chief justice, chancellor, or admiral. In his absence the councillor next in commission presided. Before this court nearly all cases came, either in the first instance or on appeal from the county courts. For the county and city of St. Mary's, it was the court of first instance for all causes, civil, criminal and testamentary; and for the rest of the province for all causes testamentary, all the more serious criminal offenses, and all civil actions involving property to the value of 1200 pounds of tobacco. All other causes could be appealed to it from the county courts. The judges were sworn to give judgment according to the laws of the province. Where these were silent, the laws of England were supposed to be followed. From this court, appeals could be taken to the Council, sitting as the Upper House of Assembly, upon writs of error. This was often done. It often heard charges against citizens for sedition and bound

[1] I. Assem. 271.

[2] I. Assem. 284.

them over to the Provincial Court. Charges of misconduct of officials were heard, and a great number of cases, especially those concerning land, came before it in the form of petitions for final settlement.

The county courts had very limited powers. Civil causes not amounting in value to 1200 pounds of tobacco, and criminal causes not extending to life or member, were tried by them, but appeals could be always taken to the Provincial Court. The County Justices, or County Commissioners, as they were often called, were appointed by the Governor. The County Commissioners still exist, but they have lost nearly all their judicial power, while retaining the numerous administrative duties with which the county courts were burdened at this early period. A distinction was made between justices of the quorum and the other justices, in the commission appointing them, some of the quorum justices being obliged to be present at a meeting of the court to make it a legal session. The sittings of these courts were regulated by acts of Assembly.[1] Each had a clerk,[2] and all were courts of record. The Attorney General was appointed by the Governor and sometimes acted as Receiver General.[3] From this time on the county courts were used more and more for administrative purposes, thus depriving the sheriff of much of his importance.

Land.—The land question was always important. Although granted to Lord Baltimore, the original rights to the land had belonged to the Indians. The Proprietor recognized this in at least a few instances.[4] Indeed, the settlers made many purchases from the Indians until forbidden by an act of Assembly, which declared that such purchases infringed upon the rights of the Proprietor.[5]

The Proprietor granted the land to the adventurers according to so-called Conditions of Plantation, several of which had been issued by this time. By these conditions

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[1] I. Assem. 149, 184, 232. [2] I. Assem. 148, 149, 157, 162.
[3] I. Council, 261, 266. [4] Kilty's Landholder's Assistant, 14.
[5] Kilty's Landholder's Assistant, 15; I. Assem. 248.

the fee remained to the Proprietor, while the use was granted in consideration of a small yearly quit-rent. The method of granting the land was simple. The settlers entitled to land by the Conditions of Plantation, or by special warrant of the Proprietor, first had these rights recorded at the office of the Secretary. Warrants of survey were then demanded for the quantity of land to which applicants were entitled, and were issued by the Governor, or the Secretary under his direction. These warrants, signed by the Governor, were directed to the Surveyor General, who, after making the survey himself or by his deputies, returned certificates of survey to the Secretary's office addressed to the "Lieutenant General." Grants or patents were then issued under the Great Seal, signed by the Governor, and endorsed by the Secretary and Surveyor General.[1] The quit-rent was one shilling sterling for each fifty acres granted, and could be paid in tobacco if the Proprietor was pleased to accept it in lieu of money.[2] The Proprietor had the right to establish whatever rents he chose. No land could be held contrary to the English statutes of mortmain,[3] and Maryland still follows this good old rule.

Besides the ordinary grants, many manorial grants were made, Lord Baltimore being freed by the charter from the action of the statute *Quia Emptores* (18 Edw. I.). These grants carried with them the rights to hold Court Baron and Court Leet, with view of the Frankpledge, and these rights were actually exercised.[4] The quit-rent for the manors was the same as for other grants, though at one time previous to this it had been twice as large. The lords of the manors had other rights, for example, to stray cattle[5] and escheats of tenants' land upon non-payment of rent. Occasionally land was forfeited by tenants for rebellion.[6] Perhaps fines for alienation of manorial lands fell, during this early period,

[1] Kilty's Landholder's Assistant, 65, 66.
[2] I. Council, 223, 233.
[3] I. Council, 227, 236.
[4] Johnson's Old Maryland Manors.
[5] I. Assem. 271.
[6] Kilty's Landholder's Assistant, 28, 92, 103, 104.

to the lords of the manors, for little is heard of alienation fines due the Proprietor previous to 1658.[1] A large number of manors were surveyed for the Proprietor. These Proprietary manors were divided into leaseholds of terms of years at a small rent.[2]

A great quantity of land escheated to the Proprietor. The laws and rules of escheat were not those in use in England, but rested on the construction and pleasure of the Proprietor. The term escheat was applied in a most sweeping way and embraced nearly all methods by which land might revert to the Proprietor. Want of legal owners, forfeiture by treason or suicide, failure to pay the rent, seem to have been sufficient causes for escheat. The want of legal heirs was construed very broadly, so that the land of a man dying without heirs of the whole blood, in the direct descending line, was liable to escheat. The want of heirs was the most general cause of escheat. All these rules were very favorable to the Proprietor. The escheats were found by juries of the neighborhood upon a mandamus issued from the Court of Chancery to the sheriff of the county in which the land was situated, and ordering the sitting of such a jury upon the land in question.[3]

The inhabited portions of the province were divided into hundreds. The bounds of the hundreds were appointed by the Governor, and in the early period they were not only election districts, but also the bases of representation.[4] The militia was organized by these hundreds,[5] and they were the bases of the collection of revenue. As soon as the amount of the population justified it, counties were established by the Governor, each embracing several hundreds.

Each county had a sheriff and a county court. The assessments were levied upon the counties, and they were the bases of representation in the Assembly.[6] The county

[1] McMahon's Maryland, 175.

[2] Kilty's Landholder's Assistant, 219, 220.

[3] Kilty's Landholder's Assistant, 173, 174, 175, 176.

[4] I. Assem. 260. [5] I. Assem. 159, 193, 253. [6] I. Assem. 284.

was also the basis of the poor relief.[1] At this time the counties were just beginning to come into prominence.

Taxation.—The expenses of the province were small. Almost all the officials were paid with fees. The expenses of the Assembly and the cost of wars with the Indians or internal dissensions were the main items of expenditure. In 1647 the Proprietor undertook to defray the whole charge of the government in consideration of an "act for customs" passed by the Assembly. This act granted the Proprietor a duty of ten shillings on each hogshead of tobacco exported from the province.[2] But in 1650 an act was passed relating to the levying of war within the province. By this act all the expenses of any such war were to be levied upon the inhabitants of the province.[3] The "whole charge of the government" meant, evidently, the payment of the officials of the Proprietor and the costs of any wars or disturbances, for we find the expenses of the Assembly and other minor expenses levied upon the inhabitants.[4]

The act of 1647 had caused much complaint[5] and had been the cause of an animated correspondence between the colonists and the Proprietor.[6] The Assembly of 1648 declared that the previous Assembly was not a legal one and protested against all the laws passed by it.[7] The Assembly of 1649 passed an act limiting the ten shillings export duty to tobacco shipped on Dutch ships to other than British ports, provided that one-half of the duty should be used in satisfying claims arising from the defense of the Proprietor's rights in the recent rebellion (of Ingle).[8]

The Assembly of 1650 passed an act that no subsidies, aids, customs, taxes or impositions should thereafter be laid, assessed, levied or imposed upon the freemen of the province, or their goods or chattels, without the consent and approbation of the freemen obtained in a General Assembly.[9]

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[1] I. Assem. 296. [2] I. Assem. 416. [3] I. Assem. 302, 416.
[4] I. Assem. 231. [5] I. Assem. 220, 221. [6] I. Assem. 238, 262.
[7] I. Assem. 220. [8] I. Assem. 252. [9] I. Assem. 302.

In another act it was declared that the freemen could not be compelled to serve in any war without the province unless the General Assembly had approved such war, nor should martial law be exercised in any place except in camps and garrisons.[1]

The expenses of the Assembly and the other provincial expenses were levied by a direct poll tax. This was equally assessed upon the freemen of the county, hundred or province, according as the expense was for the benefit of county, hundred or province. The Puritans, by an act of 1654, taxed property, the law directing that not only freemen, but also all servants (except women not negro or Indian) should be taxed; also land, cattle and horses.[2] This act was of course not regarded after 1657. These taxes were levied by act of Assembly, which specified every appropriation.[3] The poor rate was assessed upon the counties.[4]

Common law fines and amerciaments and forfeitures formed another source of proprietary revenue. They were due the Proprietor as head of the State. Amerciaments were fines imposed by acts of Assembly and were granted by them wholly or in part to the Proprietor.[5]

Other sources of revenue for the Proprietor were the quit-rents and alienation fines. The quit-rents were the charges to be perpetually and annually paid to the Proprietor by those to whom he had granted land. The amount of the rent depended upon the Conditions of Plantation, and so it was never uniformly fixed. Rents at this period were payable either in money or commodities, as the Proprietor desired,[6] though at the beginning they were payable in wheat.[7]

Alienation fines had been little noticed, but in the year 1658 the new Conditions of Plantation declared that one year's rent should be reserved for fines for any alienations. These fines must be recorded in the provincial, or in a county

[1] I. Assem. 302.
[2] I. Assem. 342.
[3] I. Assem. 142, 143, 144, 238, 284.
[4] I. Assem. 296.
[5] I. Assem. 108, 161, 193, 251, 286, 294, 295 are instances.
[6] I. Council, 223, 233.
[7] I. Council, 47.

court, and the fine paid before alienation, otherwise the alienation was invalid.

Besides all these revenues, the licenses for trade with Indians, for keeping ordinaries, etc., yielded something.[1] The Proprietary manors afforded revenue. Subsidies were occasionally granted to the Proprietor.[2] Moreover, debts due him were to be paid before any other debts.[3]

The fees due to officials of the province were regulated by acts of Assembly, which was never content to have them regulated by the Proprietor. Sometimes a Receiver General was appointed;[4] sometimes the Attorney General or the Secretary was also Receiver General.[5] By this time the offices of Secretary and Receiver General seem to have been considered as united in one person.[6]

The Currency.—There was but little money in colonial Maryland. Some coin had been acquired from the Spanish colonies and was of varying value. The actual currency in use was tobacco. Taxes were levied and collected in tobacco. Officials' fees were estimated and paid in tobacco, as were all debts, fines and contracts. This commodity was a legal tender by act of Assembly.[7] The Proprietor's rents were paid in tobacco. In fact, tobacco was money.

The Militia.—The Maryland militia was organized on the basis of divisions of the province called hundreds—a reversion to old Teutonic custom. All men in each hundred between sixteen and sixty years of age and able to bear arms met, chose a commander and arranged whatever they thought necessary for the common defense.[8] The Puritans enacted that each county should have a captain and other officers to see that the inhabitants were properly supplied with arms.[9] Afterwards the Proprietary government appointed colonels for each county. These colonels were usually members of the Council. The Governor was, by his

[1] I. Assem. 307; I. Council, 300, 303. [2] I. Assem. 123.
[3] I. Assem. 304.
[4] I. Council, 263. [5] I. Council, 116, 261. [6] I. Council, 323.
[7] I. Assem. 162. [8] I. Assem. 253. [9] I. Assem. 347.

commission, commander-in-chief, and led the troops in person. The "muster master-general," while the office lasted, had also a certain power over all the militia. The troop of the hundred was called a trained band, and had a sergeant to train it, whose fees were sometimes regulated by the Assembly. Systems of alarm upon signs of danger were carefully arranged and were rigorously enforced.[1]

Religion.—The facts of the Act of Toleration in 1649, its repeal in 1654, and re-establishment in 1658,[2] are well known. There was no original connection between the Church and the Government. No church could hold land contrary to the English statutes of mortmain.[3] By early statutes it had been declared that Holy Church should have all its rights and liberties within the province,[4] and by this term the Roman Catholic Church was most probably meant. By this time (1658) the Protestant part of the population outnumbered the Catholics.

The Secretary.—In point of importance the Secretary was the second officer in the province. He recorded all grants of land or offices, and was empowered to probate and record all wills and inventories and grant letters of administration. He was the secretary of the Council and recorded all the ordinances and proclamations of the Governor as well as any instructions.[5] The Secretary was the clerk of the Assembly until it divided into two houses.[6] After this division he remained the clerk of the Upper House.[7] He administered the oath of office to the Governor and the councillors. His income was drawn from fees, which the Assembly regulated by acts.[8] The Secretary at this time was the brother of the Proprietor and was given larger powers than any other previous Secretary,[9] but it is only necessary to state that these were intended as checks upon the

[1] I. Assem. 159, 193, 253, 347.
[2] I. Assem. 244, 340, 351; I. Council, 334.
[3] I. Council, 227, 235, 237.
[4] I. Assem. 83, 96.
[5] I. Council, 218, 328.
[6] I. Assem. 247.
[7] I. Assem. 286, 371.
[8] I. Assem. 289, 311.
[9] I. Council, 335.

power of the Governor. The Secretary sometimes collected the rents and other Proprietary dues,[1] and after 1658 is generally the Receiver General. Occasionally the Secretary was also the Attorney General.[2]

The Surveyor General.—This officer was first appointed in 1641.[3] He held office at the pleasure of the Proprietor,[4] and had the power to appoint deputies to assist him.[5] These deputies received such fees as he allowed, and he was held responsible for their conduct.[6] His pay was derived from fees, which, like those of the other officials, were regulated by act of Assembly.[7] All warrants of survey were directed to him by the Governor, and he executed them himself, or by his deputies, and then returned certificates of survey to the Secretary's office addressed to the Lieutenant General. He seldom executed these warrants himself, and in many respects resembles the steward of the old English manor. He was the counterpart of the seneschal of the Palatinate of Durham.

The Muster Master-General.—This officer was appointed in 1648. He was paid by fees[8] and held office at the Proprietor's pleasure. He seems to have been a kind of commander-in-chief, subordinate, of course, to the Governor, and saw to it that the military regulations of the government were carried out and the drills duly held. He perhaps exercised martial law when needed and carried out the penalties for disobedience.

The Sheriff.—The sheriff was appointed by the Governor. He was a county officer and served all writs and warrants.[9] He inflicted all required punishments upon criminals. He was the collector of all taxes laid by assessment upon the taxables. He kept criminals imprisoned and took bail from accused persons.[10] He held inquests in the absence of any

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[1] I. Council, 116. [2] I. Council, 158. [3] I. Council, 101.
[4] The first Surveyor General held *durante vita*.
[5] I. Council, 219. [6] Kilty's Landholder's Assistant, 271.
[7] I. Assem. 163, 312. [8] I. Council, 215; I. Assem. 283, 292.
[9] I. Council, 117, 229. [10] I. Assem. 360.

coroner, and indeed was often appointed coroner as well as sheriff. To him the writs of election were issued. He held the elections and made the returns.[1] His pay was by fees, which were duly regulated by acts of Assembly.[2] The sheriff was the representative of the Proprietor's power in the counties and was responsible to the Proprietor alone. He was the possessor of large functions, and was in no way subordinated to the county courts. The only power the people had over him was the power to regulate his fees.

The Constable.—The constable was appointed by the Governor for each hundred. Every lord of a manor also appointed a constable.[3] His office was often connected with that of coroner,[4] and until the counties were organized, writs were directed to him to hold elections. The constable, during this earlier period, executed all writs and warrants. In a word, he exercised all the functions of a sheriff. At this time (1658) his duties are well summed up in the oath for constables enacted several years later.[5] He raised the hue and cry, arrested all law-breakers, and presented to the county courts all breaches of the laws of the province, and executed all warrants directed to him.

The Coroner.—This office was held either by the sheriff or the constable,[6] and did not become a distinct office until several years after 1658.

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[1] I. Assem. 260, 369. [2] I. Assem. 289, 308, 360. [3] I. Assem. 412.
[4] I. Council, 91. [5] I. Assem. 410. [6] I. Council, 85, 91, etc.

CHAPTER III.

The Maryland Palatinate.

Maryland was a Palatinate. Its charter gave Lord Baltimore, "all and singular, such and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets and limits aforesaid, to be had, exercised, used, and enjoyed, as any Bishop of Durham within the bishopric or County Palatine of Durham in our kingdom of England ever heretofore hath held, used, or enjoyed, or of right could, or ought to have held, used or enjoyed."

The nature of the Palatinate of Durham has been fully discussed elsewhere.[1] The Proprietor had even more power than any Bishop of Durham ever had. Within the province of Maryland the Proprietor had regal power. It was his justice that was administered in the courts, and all writs and warrants were issued in his name. These courts were appointed by him, and he determined their jurisdiction and manner of proceeding. In them he had the laws executed, and passed sentences amounting even to confiscation and death. He likewise had the royal power of pardon and had admiralty jurisdiction. The Proprietor could erect towns, boroughs, cities, and ports of entry and departure.

From the Proprietor all land was held. He received all escheats and fines for alienations, and had sovereign title to all mines, wastes, forests and chases. He could erect manors with court leet and court baron. The Proprietor

[1] A most excellent description of the constitution of the Palatinate of Durham may be found in J. S. Bassett's Constitutional Beginnings of North Carolina. In Surtees' History of the County Palatine of Durham and the Publications of the Surtees Society, more detailed information may be found.

could raise troops and levy defensive warfare, even pursuing enemies without the limits of the province. He could exercise martial law. He could impose duties upon ships and merchandise. He could establish churches and chapels and have them consecrated according to the ecclesiastical laws of England. He held their patronage and advowsons. Only through the Proprietor could the king do anything in the province. All these powers belonged to the Palatine of Durham, and all except the ecclesiastical [1] were exercised by the Proprietor of Maryland.

In the matter of legislation there is a difference. There was no provision in Durham for the assembling of the people to make laws. If the Palatine wanted any new laws they were passed by his Council, which was composed of the chief men of the county. The Proprietor, however, had the right to call assemblies of the freemen and enact laws with their assent. But the colonists insisted on their right to propose and enact laws with the assent of the Proprietor. This right was obtained. The Proprietor retained his right to initiate some legislation but not all. Maryland laws, like those of Durham, were published in the courts. The Proprietor was not obliged to submit these laws to the Crown for approval. In addition, the Proprietor could publish ordinances not extending to life, member or property. This has been aptly designated as a police power. Again, the Proprietor possessed an advantage over the Bishop of Durham, in that cases between the Bishop and his subjects could be appealed to the Court of Exchequer in London, whereas cases between the Proprietor and his subjects were finally settled in the Proprietor's courts, from which there was no appeal to the king. Parliament levied taxes on the Bishop of Durham, and these were collected by his officers, as taxes were collected in Maryland by the Proprietor's officers, but Parliament had no power to tax the Proprietor of Maryland, and the charter exempted him from royal taxation.

[1] This power was exercised by the Proprietor after 1715.

The administrative machinery of the Proprietary government bears some likeness to that of the Durham Palatinate. The Governor of Maryland was its administrative head. He had the highest judicial jurisdiction and presided over the Court of Chancery. Thus he resembled the Chancellor of Temporalities of the Bishopric of Durham. In both governments are seen the Receiver General. In both the sheriff was the executive officer of the Palatine, collected the revenue and was responsible to the Palatine alone. The Seneschal of Durham bore some resemblance to the Surveyor General of Maryland, and the bailiff to the constable. The Bishop's Council had its counterpart in the Proprietor's Council, which, while it had less legislative, had more judicial power and also retained great influence in legislation.

The division of the courts into County Courts and Halmote Courts was followed in the powers given to the Provincial, Chancery, Admiralty and Council, and to the County Courts. While allegiance to the king was reserved, the oath of fidelity was taken to the Proprietor, and all writs ran "in the year of our dominion." In the period now to be considered it will be seen that the Proprietor had vastly more power in Maryland than the king had in England, and freely exercised his power. In no other American colony was there such despotic authority. In none was such absolute government ever established as existed in Maryland in this period.

The people had, by the charter, the rights of Englishmen and the right to consent to impositions. It was the constant assertion of these ancient rights that enabled the freemen of Maryland to resist successfully the demands of the Proprietor and to obtain a high degree of independence. But this was not accomplished without many struggles, some of which it is now intended to sketch for the purpose of throwing new light on Maryland constitutional history in a comparatively unknown period.

CHAPTER IV.

Constitutional History of Maryland, 1658–1689.

It is intended to sketch the constitutional history of Maryland from 1658 to 1689. While the point of view of the people is taken, it is attempted to do justice to the Proprietor, who hitherto has received exclusive attention. The first division of the period may be entitled:

The Restoration of the Proprietary Government and Fendall's Rebellion.—In 1657 the Proprietary government was once more restored, but only in St. Mary's County. Not until the latter part of March, 1658, did the newly appointed Governor rule over the whole province, the six Puritans of Providence signing the articles March 26.[1]

Fendall, by his commission dated July 10, 1656, had been given greater powers than any Governor had exercised for a long time, but a check was soon placed upon Fendall by the appointment of Philip Calvert, youngest brother of the Proprietor, as Secretary.[2] The presence of a Calvert in the province was sure to keep prominent the privileges of the Proprietor, and also assured a lucrative position to a member of the family. The office given to Philip Calvert was that of Secretary and Receiver General, ranking next to the Governor. Almost the first thing the Council did was to ask the Assembly to free the Councillors from paying taxes for themselves and ten poll in addition, as was done in Virginia;[3] but it does not seem to have favorably impressed the Assembly, as no such law appears to have passed. The enactments of the Puritan Assemblies were torn from the records.[4]

The next thing to be noted is the persecution of the Quakers,[5] in direct violation of the law declaring all persons

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[1] I. Council, 340. [2] I. Council, 327. [3] I. Council, 341.
[4] McMahon's Maryland, 210. [5] I. Assem. 351, 358.

who profess to believe in Jesus Christ, to have liberty of conscience and free exercise of their religion. The Quakers had made many converts, especially in the Puritan settlements.[1]

Baltimore and Charles counties were established at this time, thus increasing the number of counties to six.

Fendall's Rebellion was now in preparation. As early as October, 1658, Thomas Gerrard had been prosecuted by the Attorney General for having said, as it was alleged, that the Governor would yield to anything requested by the people of Anne Arundel, although it is doubtful whether Fendall had any idea of rebellion at that time. Gerrard was a friend of the Governor and does not seem to have suffered from this charge.

The real causes of the disturbance that now arose are scarcely explained by Maryland historians. Governor Fendall is charged with being the chief cause of rebellion. It is true that Fendall tried to keep in favor with the party of resistance, and that he was intimately connected with Gerrard, whose party was destined to triumph in 1689; but it was really the question of taxation that caused the so-called Fendall's Rebellion. It is sometimes said it was a Puritan movement, and so it was in one sense; but Gerrard, who seemed to be the real leader, was a Catholic who had been and was then a member of the Council. In 1647 an act was passed by the Assembly granting the Proprietor a duty of ten shillings on every hogshead of tobacco exported from the province. This act, by the admission of the Proprietor, was the cause of complaints.[2] In 1649 an act was passed, granting the Proprietor for seven years a duty of ten shillings on every hogshead of tobacco exported on any Dutch vessel, not bound to an English port. This act implies the repeal of the act of 1647, although not expressly declaring it so repealed.[3] The Puritans did not enter Maryland until 1649, and soon afterward overthrew the Proprie-

[1] I. Council, 362. [2] I. Assem. 420. [3] I. Assem. 252.

tary government. They could not have been seriously affected by this act.

The Proprietor in 1659 sent instructions to Fendall to have the act of 1647 repealed upon condition that another be enacted, imposing a duty of two shillings on every hogshead of tobacco exported to Great Britain or Ireland, and ten shillings on every hogshead exported to any other country.[1] The act of 1647 also provided that the expenses of any war should be borne by the Proprietor, but an act of 1650 declared that the expenses of any war should be levied upon the taxables.[2] The determination of the Proprietor to have an export duty levied upon the province aroused an opposition that successfully resisted the demand until 1671.

Cromwell was now dead, and his son had resigned the Protectorship after a few months of power. It now seemed to the colonists that everything was at sea; whoever seized the government would keep it. This was the idea of Gerrard and Fendall.

An Assembly was called, to which the demands of the Proprietor were submitted. The writs for the election of four burgesses from each county were issued,[3] and on February 28, 1660, the Assembly met. The membership of the Lower House is noteworthy. In the first place, Anne Arundel County, the center of Puritanism, sent seven delegates,[4] headed by Fuller, the head of the late Puritan government. This representation was a violation of the writs, which called for only four delegates from each county. Of the twenty-seven delegates chosen, at least twenty had been connected with the former Puritan government,[5] or their Puritanism can easily be proved.[6] Some also held office by Fendall's appointment.[7] Anne Arundel and Calvert counties had eleven delegates. Baltimore County was repre-

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[1] I. Assem. 420.
[2] I. Assem. 302.
[3] I. Assem. 381.
[4] I. Assem. 382.
[5] Compare I. Assem. 382 with I. Assem. 339, 340, 359, I. Council, 317, 318.
[6] I. Council, 351, 352, 358.
[7] I. Council, 348.

sented for the first time, and its delegates, after some hesitation, joined Fendall's party.

On the side of the Proprietor there were assured only three delegates of St. Mary's County, and of these we can only be entirely certain of one named Barton, who had been especially commended to Fendall by the Proprietor for preferment.[1] The Lower House promptly contested the election of these three delegates[2]—the first instance of a contested election in Maryland. Fendall ordered a new election, but the only man defeated was Barton, who was replaced by Gardner, certainly an adherent of the Calvert party. The Governor had power to influence the elections through his appointees, the sheriffs. This Assembly illustrates the fact. In the Upper House, Fendall had Gerrard and Utye. Lloyd, who was sick at this time, was absent. For the Proprietor there were Philip Calvert the Secretary, John Price the commander of the militia, Clarke the Surveyor General, ex-Governor Stone (who died about this time), Baker Brooke, who was devoted to Lord Baltimore, and Luke Barber, an ardent Catholic.

The Lower House demanded that the instructions of the Proprietor for the repeal of the act of 1647 be sent down.[3] The commission for the repeal of this act, together with a "bill for customs to be propounded to the Assembly," was read in the Upper House and sent down to the Lower House. Nothing more is heard of this commission, nor, indeed, was such an act ever passed. The act of 1647 was repealed the following year.[4] The duty, when it did pass in 1671, was made a uniform one of two shillings per hogshead of tobacco. Part of the duty even then was applied to the expenses of the province.[5]

The Lower House sent the following declaration to the Upper House, that "this Assembly of Burgesses judging themselves to be a lawful Assembly without dependence on

[1] I. Council, 326. [2] I. Assem. 383. [3] I. Assem. 383.
[4] I. Assem. 416. [5] II. Assem. 284.

any other Power in the Province now in being is the highest Court of Judicature. And if any Objection can be made to the Contrary, Wee desire to heare it."[1] This declaration will not seem so strange if compared with that made by the Virginia Assembly at this time, that "the supreame power of the Government of this country shall be resident in the Assembly" and that "all writs issue in the name of the Grand Assembly of Virginia."[2]

The Upper House asked: (1) If this paper was addressed to the Governor and Council, or to the Governor and those of the Council present by virtue of special writs received for the Assembly; (2) if they judged themselves a complete Assembly without the Governor and the members of the Upper House; and (3) if they judged that they were wholly independent of the Lord Proprietor. The Lower House then requested a conference, which was held the next day. In this conference Fendall, Gerrard and Utye declared in favor of the Lower House, while Philip Calvert, Baker Brooke and Price opposed it. The Lower House informed the Upper that they could not allow it to be an Upper House, but that they might come and sit in the Lower House, to which Philip Calvert replied that in that case the Governor was President of the Assembly and the Speaker must yield his place to him.

Another conference was held, in which it was agreed that the Governor should preside and have a casting vote, but the Speaker was retained, with the power of adjourning or dissolving the Assembly. Philip Calvert refused to agree to these terms, "it being a manifest breach of his lops Right Royall Jurisdiction and Seigniory," and wished to have his reasons entered on the journal of the Lower House, but this was refused by the Governor; "Whereupon hee and Mr. Baker Brooke departed the House (after leave asked) and given in these words or to this effect (vizt) you may if

[1] I. Assem. 388.

[2] Campbell's Virginia, 242; Cooke's Virginia, 219.

you please, wee shall not force you to goe or stay, uttered by the Governor."

The Upper House had now been virtually dissolved and the Lower House ruled supreme. Fendall received a commission from the burgesses, as they called themselves, and Gerrard, Utye, and Slye, the Speaker of the House and the son-in-law of Gerrard, were appointed to the Council.[1]

Fendall and the Puritans were now in control, but their reign was short. The following May, Charles II. returned to England as king. This event meant, among other things, Baltimore's restoration. Philip Calvert was commissioned Governor, and the King ordered Virginia to aid Lord Baltimore in regaining Maryland. As soon as all these things became known in Maryland, men saw that resistance was useless and none was attempted. The uncertainty of the English Government had been the immediate cause of the rebellion; the firm determination of that Government caused its immediate collapse.[2] By the last of October the news had arrived and the new Governor began to take rigorous measures against the rebellion. A new Council was appointed and an armed force collected.[3] Fendall, seeing resistance was useless, surrendered and was speedily tried. Thus ended his rebellion.

The Period of Resistance, 1660-1670.—This decade was marked by the resistance of the Assemblies to the demands of the Proprietor, and was ended in 1670 by the disenfranchisement of the poorer classes of the province.

Lord Baltimore wrote to the Governor on no account to spare Fendall's life, "nor if yow can doe it (without hazarding the regaineing of the Province) to pardon so much as for life any of those that sate in the Council of warr at Ann Arundel and consurred to the Sentence of death gainst Mr Eltonhead, or other of my friends then and there murthered, and haue now againe engaged against me in this Second

[1] Kilty's Landholder's Assistant, 20.

[2] I. Assem. 389.

[3] I. Council, 394.

Rebellion, but to doe Justice upon them and I shall iustify you in it." The estates of Gerrard and Hatch, who was Fendall's father-in-law,[1] were to be confiscated. The Governor might use martial law if he so desired.

Lord Baltimore's reference to the Anne Arundel court-martial shows the Puritan basis of this rebellion, and reveals the long-continued resentment of the Proprietor. As a matter of fact, William Fuller suffered more severely than any other. He had to flee from the province and lost his estate. An attempt was made by certain informers to involve his wife and friends in a plot for his return in 1664.[2] Fendall, Gerrard and Hatch were sentenced to banishment and their estates were confiscated; but these sentences were remitted, and only inability to hold or elect to office was imposed, with security for good conduct. Upon Hatch was laid a heavy fine and banishment.[3]

Why was any leniency shown? Partly, we may conjecture, because of the reluctance of the Council to go too far and thus irritate the Puritans, and partly because neither Fendall nor Gerrard was a Puritan; Gerrard was indeed a Catholic. The temper of the people was still ugly toward the Proprietary government, for an insurrection was raised in Charles County the very month of the trial, by one John Jenkins, who had been a member of Fendall's Assembly.[4] Several men concerned in this affair were tried by jury and acquitted, a fact complained of by the Governor to the Assembly as contrary to law. He asked that a law be passed to provide for such cases.[5] The Lower House, however, voted that the persons indicted for "mutiny and sedition" be cleared.

In 1657, in his instructions to Fendall, Baltimore had authorized him, with the consent of the Secretary and two others of the Council. to make any foreigner capable of the

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[1] Council Book, 1677-1683, 337. [2] I. Assem. 494.

[3] This banishment was remitted by Charles Calvert, I. Council, 442.

[4] I. Council, 382, 445. [5] I. Assem. 402.

Conditions of Plantation, but no action seems to have been taken on this until 1661, when letters of denization were issued to Augustine Herman, and soon afterwards to many others. The "Conditions" were sometimes evaded, for we find a certain foreigner named as county commissioner before letters of denization were issued to him.[1]

An Assembly was now called by the Governor in 1660. The Lower House immediately complained about the writs of election sent to the sheriffs and asked an explanation. These writs directed the sheriffs to "cause to be elected such and so many discreete men as you shall thinke fitt to serve as Burgesses in the said Assembly." The Governor and Council replied that the sheriff could reject only those disqualified by crime, and the choice of the number of burgesses was given to him only as representing the county; the freemen could really choose as many as they desired. This explanation seemed to be satisfactory, but it can easily be seen how great an influence the sheriffs, the appointees of the Governor, could exert in the elections. The Lower House, evidently mindful of the last Assembly, now asked that an act be passed granting freedom of speech to its members, to which request the Governor responded that there was no necessity for such an act and that they would have as much freedom of speech as any burgess in Parliament.

The Assembly thereupon passed several important acts—first of all, an act establishing a mint. This measure had been urged by Lord Baltimore in 1659. He had coined some money at that time,[2] and an "Act for setting up of a Mint" had been considered in the previous Assembly.[3] After some opposition the act was now passed. The opposition was due to the doubts of some members whether the Palatine of Durham had the power to coin money.[4] This is another example of the royal power exercised by Lord Baltimore. The act further provided that counterfeiting and

[1] I. Council, 424, 429.
[2] I. Council, 365, 383, 385. [3] I. Assem. 387. [4] I. Assem. 400.

all like offenses should be punishable by death; and that the Proprietor should accept this coined money for all debts due him from the colonists.[1]

A Pension Act was also passed.[2] By an act for the appointment of certain officers, the Assembly took new power into its hands. Three persons were to be yearly recommended by each county court to the Governor as suitable persons to be appointed sheriffs. The Governor was to name one of the three, sheriff, and this appointee was to serve one year.[3] The same restriction of the terms of the sheriffs in England had been made by Parliament as early as 1444.[4] Each county court was likewise to name the constables of the hundreds, who should hold no other office. The lords of the manors named their own constables.[5]

This noteworthy attempt to curb the appointing power shows the importance of the sheriff. The act, however, was only observed for a few years by the Governor and then disregarded, as "infringing the prerogative" of the Proprietor. Of course the county courts were appointed by the Governor, but it was likely that the court would have named good men. The limitation of the sheriff's term to one year made him responsible to the people.

As regards the customs duties, which had caused such a stir in the preceding Assembly, they were repealed and a tax of twelve pounds of tobacco was levied on each taxable person in the province, to be paid to the Proprietor for the support of the government.[6] The Assembly declared that when the duty of ten shillings per hogshead was granted in 1647, the Proprietor assumed all the charges of the government both in war and peace, but that, by an act of 1650, the charge for any war within the province was to be borne by equal assessment on the inhabitants; therefore they now repealed the act of 1647.[7] For recompense the Assembly

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[1] I. Assem. 414. [2] I. Assem. 408. [3] I. Assem. 412.
[4] Taswell-Langmead's English Constitutional History, 331.
[5] I. Assem. 410. [6] I. Assem. 417. [7] I. Assem. 416.

passed a port and anchorage duty of one-half pound of powder and three pounds of shot, or their value, for every ton of burden in the case of all vessels having a deck flush fore and aft, and trading to the province but not owned in it.[1] To this act the Proprietor had already given his assent in a long letter, in which he abused Fendall while actually justifying him.[2] Thus the rebellion of the preceding year was successful in one of its main objects. The taxes were not raised. The Upper House refused to assent to an act for the maintenance of clergymen, a refusal which was repeated many times before 1689.[3] The Upper House also declared that the transcription of the old laws was a perquisite of the Secretary and could not be taken away from him. Talbot County was at this time set off by the Governor.

During all this time Philip Calvert was Governor, Chancellor, Secretary, and Treasurer. In fact, he centered all the chief offices in himself. But now there was a change. Toward the end of 1661, Charles Calvert, the son of Lord Baltimore, arrived with the commission of Governor.[4] Philip Calvert was to remain Chancellor and Keeper of the Great Seal. To Henry Sewall, who came with Charles Calvert and was his intimate friend, was given the office of Secretary.[5] This was the beginning of the system of appointing members or close friends of the Calvert family to all the important offices. From this time on the government of the province became more and more a family affair. Just at this time, however, there was one member of the Calvert family who was not at all pleased; Philip Calvert had been shorn of most of his power and, what was more grievous, of most of his fees. That there was no love lost between uncle and nephew may be seen from a letter written by Charles Calvert to his father.[6] In the same letter is seen the Chancellor's dislike for the Secretary and his opposition to him.[7] Charles Cal-

[1] I. Assem. 418. [2] I. Assem. 420. [3] I. Assem. 406.
[4] I. Council, 439. [5] I. Council, 439.
[6] Calvert Papers, 241, 242, 246, 251. [7] I. Assem. 524.

vert was a firm friend of Sewall's and frequently granted him extra powers.[1]

A curious passage may be quoted, showing the light in which the Calverts viewed Maryland. "Your lopps bearing date as p Margent I receiu'd & the several Bills of lading & inuoyce & other papers being duplicats of those I had receiu'd by Tully, & att the same time my Cozen Wms. sister arriued here & is now att my house, & has the care of my household affaires, as yett noe good Match does prsent, but I hope in a short time she may find one to her owne content & yor. Lopps desire I shall further what I can towards it."[2] A match was soon found for her, for she was married to Baker Brooke the following year. The natural consequence of this alliance was that Brooke was immediately created a member of the Council. A few years later he was appointed Surveyor General. For convenience, Charles Calvert granted to Sewall the right to sign warrants for land.[3] With Philip Calvert sided Henry Coursey, who seemed one of his most intimate friends.

An Assembly was called by the Governor. The writ required "one, two, three or foure discreete Burgesses," instead of the obnoxious "such and soe many discreete men as you shall think fitt to serve as Burgesses." This continued to be the form for a long time.[4] The first thing considered was a declaration of several inhabitants of Anne Arundel County, which the Upper House declared seditious. They desired the Lower House to find out the authors of it. The Lower House desired that if any member abuse his freedom of speech he be tried by the Assembly and not by any court, to which point the Upper House agreed. The Lower House then acknowledged that one of its members was connected with the seditious paper and wished to try him, but at a conference the "Upper House did satisfye the lower that Robert Burle is not to be tryed by an Assembly,

[1] I. Council, 444.
[2] I. Council, 444.
[3] Calvert Papers, 244.
[4] I. Assem. 425.

but at a Provincial Court regularly."[1] Burle, however, saved himself by humble submission.

About this time some ten men, including Fendall, were arrested as dangerous characters. The mutinous spirit was evidently still alive.[2] The Upper House refused to pass an "Act prescribing how to give Evidence to those of tender Consciences,"[3] an act evidently intended for the benefit of Quakers, who suffered from an act passed in the previous Assembly.[4] The Assembly declared, in regard to sheriffs, that the three persons nominated by the county court must give bond to the same and that the county would be answerable to the Proprietor. Sheriffs must execute all warrants, writs and proclamations directed to them by the Governor and Secretary, and relating only to the public, without fees. A statute of limitations was passed which has lasted, practically in the same shape, until to-day.[5]

An act defining taxable persons was passed and a fee was imposed on marriages.[6] In an act concerning the Secretary's fees, the Secretary was directed to send a copy of the laws to each county court, at a charge of 1000 pounds of tobacco.[7] The Governor's salary was fixed at 25 pounds of tobacco per poll.[8] In the beginning of 1663 a commission was issued to Elzey, Horsey, Thorne and Odbur to grant land warrants on the Eastern Shore in any part below the Choptank river.[9] This was the beginning of the Eastern Shore Land Office.[10] All fees from such warrants were to go to the Secretary.

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[1] I. Assem. 430. [2] I. Council, 445, 449. [3] I. Assem. 436.

[4] I. Assem. 411.

St. Mary's County complained of having the Provincial Court Grand Jury, to which it was answered that every county ought and must have a Quarterly Grand Jury. I. Assem. 438.

[5] I. Assem. 449. [6] I. Assem. 449, 450.

The purchase of a State House and prison was authorized (the prison was ordered to be built by the Governor and Council). I. Council, 460.

[7] I. Assem. 454. [8] I. Assem. 452. [9] I. Assem. 462.

[10] In 1661 such a power had been given for six months only to Scarburgh, Revel and Elzey. I. Council, 435.

The next Assembly was called in the September of this year. Jerome White, the Surveyor General, had been made councillor by the Proprietor. It is worth noting that Thomas Notley now first appears. The first naturalization act was passed.[1] The Assembly ordered that a pillory, stocks and a ducking stool be set up in each county, and irons for the burning of malefactors. The sheriffs were to take bail from all persons arrested. The Governor's pay was continued at twenty-five pounds of tobacco per poll, and the Secretary was created a notary public.[2]

Three important acts were passed concerning land. First, that all conveyances of land or houses must be in writing; "noe Mannors Lands Tenemts or other hereditamts shall pass alter or change from one to another within this Pvince whereby an Estate of Inheritance or Freehold shall be made or take Effect in any Pson or Psons," unless made in writing, indented, sealed, and enrolled in the Provincial Court or the county court. The clerk of the court was to enroll these deeds and, at the end of the year, send the roll to the Secretary.[3] Second, any person holding quiet possession of land for five years should be considered as holding sufficient title.[4] Third, servants should no longer receive any land at the expiration of their term of service.[5]

In September, 1664, a new Assembly met. It passed acts providing for ferries and a magazine, but is chiefly interesting as showing the animosity of Philip Calvert and Henry Coursey to Henry Sewall, the Secretary,[6] and for the passage of an "Act concerning Negroes & other Slaves." By this act all negroes and slaves were to serve during their life-time. Any freeman marrying a slave should be a slave to the same master during the slave's life-time. Any issue of such women should be slaves, except the issue of women already married, who should serve until thirty years of age.[7]

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[1] I. Assem. 462. [2] I. Assem. 490, 491, 492, 498. [3] I. Assem. 488.
[4] I. Assem. 501. [5] I. Assem. 496. [6] I. Assem. 524.
[7] I. Assem. 527, 533.

In 1666 the Governor received a new commission, and, with the Chancellor, was sworn in, as was also Richard Boughton, the new Secretary. Somerset County was soon after established.[1]

The Assembly that met this year held an interesting session. The Speaker chosen was Thomas Notley,[2] a man of whom we shall hear further. There is an account of a Baltimore County election in the proceedings of this session, showing the power of the sheriff in elections. It seems this sheriff was also clerk of the court, and, while at one of the court sessions, received a writ for the election of delegates to the Assembly. He immediately held an election, although, of course, only a few of the inhabitants were present.[3]

The Lower did not always agree with the Upper House. The chief cause of dispute was over the "Cessation of Tobacco," as it was called. It was an agreement not to plant any tobacco for a year. This cessation was greatly desired by the Governor and the Council, whose fees, paid in tobacco, were diminishing in value. The Lower House opposed the measure.[4] The contest was quite lively, the Lower House refusing to go into conference with the Upper or to debate the matter, saying it would infringe upon their rights. An appeal to English customs was then made by the Upper House. It was urged that the House of Lords used to sit and vote with the Commons, and that the Proprietor had absolute right to do as he pleased in the province. But for his command to the contrary, they would come and vote with the Lower House.[5]

The Lower House did not go into conference with the Upper, but nevertheless consented to the proposed cessation if Virginia and the Carolinas should do likewise. The objections of the Lower House had been most skillfully answered

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[1] I. Council, 553. [2] II. Assem. 10. [3] II. Assem. 74.

[4] II. Assem. 36, 37, 38, 39, 40, 41, 43, 44, 45, 49, 66, 97, 98, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 113.

[5] II. Assem. 42.

by the Upper.[1] The Speaker and other members of the Assembly wrote to the Proprietor asking him to veto the act, which he did.[2] The conflicting interests are well shown in Lord Baltimore's answer to the remonstrance of Virginia to the king on account of this veto.[3] The Lower House was inclined to assert itself and its rights.[4] It called itself a House of Commons.[5] This fact was perhaps due to a preponderance of the old Puritanical influence, for quite a number of the members had been members of Fendall's Assembly and were in sympathy with it.[6]

The Chancellor was a figure of importance. He informed the Assembly of the reasons for calling the session and was quite prominent at various times.[7] The Lower House was very careful of its records, and an act was passed to make sure of their preservation.[8] As usual, the limitation of fees was an important matter, and something was done toward it[9] in the case of the Muster Master-General as well as for the clerks of the county courts. The Governor was empowered to carry on war without the province for two years.[10] This Assembly, like others, had the danger of an Indian war to consider.

The beginning of Maryland road laws is seen in an act providing for highways and making the heads of rivers, creeks, branches and swamps passable for horse and foot. The roads were to be selected by the county commissioners, who were to appoint overseers and levy tobacco or labor upon the taxables of the county. The law has remained in force until to-day with scarcely any change.[11]

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[1] II. Assem. 45, 109. [2] II. Council, 18. [3] II. Council, 15.

[4] II. Assem. 24, 89, 91. [5] II. Assem. 64.

[6] Slye, Preston, Burle, Besson, Utye, Howell, Wade, Gerrard, Fowke and others.

[7] II. Assem. 10, 49, 109. [8] II. Assem. 76, 133.

[9] II. Assem. 135, 137. [10] II. Assem. 136.

[11] II. Assem. 134. In the discussion of the bill it was decided that roads should be fifteen feet wide, but this seems to have been abandoned with other things later on. II. Assem. 68, 77.

Among other important acts passed this session were those forbidding that any person should be sheriff and clerk at the same time,[1] or that a county justice, sheriff or county clerk should plead any case as attorney in his own court,[2] both of which abuses were serious. A coroner was to be appointed in each county,[3] and a copy of the laws of the province was to be sent to each court, for which copy the Chancellor got a handsome fee.[4] A bill was introduced for settling clergymen in every county. It failed to pass, but caused some disturbance.[5] The introducer of the measure was called a "ffactious fellow" by the clerk of the House, who was a Roman Catholic.[6]

Of the next few years we know but little. The chief measure was the erection, by ordinance of the Governor, of certain ports or towns where all loading or unloading of ships must take place. The ordinance was re-enacted almost yearly, and was evidently not obeyed, despite the inducements offered.[7] Dorsett, later called Dorchester County, was set off during this period. The Assembly that met in 1669 was resolved to remedy affairs. The Governor communicated to the Assembly the Proprietor's veto of nine laws passed in 1664.[8] The Lower House immediately asked for a copy of Lord Baltimore's charter, which was given, and then demanded to know if there was any person in the province who could confirm bills passed by this

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[1] II. Assem. 132.

[2] II. Assem. 132.

[3] II. Assem. 130.

[4] II. Assem. 133.

An appropriation was made for building a prison, and innkeepers were regulated. II. Assem. 139, 148.

All persons in the future who wished to leave the province were required to post their names three months before in the Secretary's office, and if no objection at the end of this time, the Governor issued passes to them. I. Assem. 145.

This law gave rise to an interesting dispute later.

[5] II. Assem. 86.

[6] Davis' Day Star, 137, 225.

That this Assembly enjoyed life is shown by their expenses, which included wine, brandy, beer, rum, "Limeade," and "Beverage with sugar in it."

[7] II. Council, 31, 35, 47.

[8] II. Assem. 157.

Assembly so that they could not be repealed except by consent of the Assembly. The Upper House answered that this power belonged to the Proprietor alone.[1] This power of the Proprietor to repeal laws whenever he wished was always considered a great grievance by the colonists. The Upper House was now composed of Charles Calvert, Philip Calvert, William Calvert, Baker Brooke, who had married William Calvert's sister, Jerome White, the Surveyor General, William Evans, commander of all the military of the province, Henry Coursey, the close friend of Philip Calvert, and Thomas Trueman. The Calvert family had the majority, and from this time on continued to have it.

The Upper House took up the case of a clergyman, Charles Nicholett, who had preached a sermon to the members of the Lower House. He had urged them to keep before them the example of the last House of Commons in England. He said they had the same power and liberty as the people of England, and if they did not pass laws agreeable to their conscience they possessed no real liberty. The people expected much, and the Assembly should consider especially the heavy taxes of the preceding year. All this was considered "seditious" by the Upper House. When summoned before it, Nicholett said he had been urged by members of the Lower House to stir it up to do its duty, but upon being asked their names he denied that he had said any such thing. He was then fined and ordered to acknowledge in the Lower House his error in meddling in governmental affairs, and had to ask the pardon of the Proprietor, Governor and Assembly.[2]

Another cause of complaint was the taxes. The Lower House asked by what law the last levy was raised. The Upper House said it was by the perpetual law called an "Act concerning the levying of war within the Province."[3] The Lower House now prepared a statement of the public

[1] II. Assem. 159, 161.

[2] II. Assem. 159, 162, 163.

[3] II. Assem. 161.

grievances, seven in number: (1) That there was no one authorized by the Proprietor to confirm the laws. (2) That laws in the law-book signed "his Lordship willeth these to be laws," should be repealed only with consent of the Assembly, and yet they were annulled without the consent of the Assembly. (3) That the raising of the last levy was contrary to the Proprietor's charter and the laws of the province, and without the consent of the freemen. (4) That privileged attorneys were a grievance. (5) That the sheriffs seized tobacco upon pretence of public debt. (6) That officers took illegal and excessive fees. (7) That vexatious informers were a grievance.[1]

As far as the first two charges are concerned they were doubtless grievances, but perfectly justified by the charter. Nevertheless it was hard to have a law annulled after years of enforcement; everything done under the law was thus made illegal. The other charges are without doubt justified. As early as 1650 the Assembly had declared that without its consent no money should be raised.[2] This was an attempt to raise money as the Council pleased, or, in a word, to govern without a representative Assembly, as had been tried in England years before. The Upper House made an elaborate answer to the grievances, declaring that they were all prerogatives of the Proprietor and demanding that the Lower House raze the paper from its journal.[3] Then came quite a contest, during which the Upper House informed the Lower that they were not like the English Commons, but their powers were only such as the Common Council of London, and that their only power to meet was by virtue of Lord Baltimore's charter. No charter, no Assembly; no Assembly, no privileges.[4]

This doctrine made the Assembly of small moment and the prerogatives of the charter everything. By logical deduction the Governor and Council had all power. The

[1] II. Assem. 168.
[2] I. Assem. 302.
[3] II. Assem. 173, 177.
[4] II. Assem. 178.

Council was nothing but a family ring. The result was to give all offices to the Calverts or their relatives, who got what they could and did what they pleased. In a word, the field of Maryland was to be worked by them for the sake of offices and fees. The colony was to be governed absolutely by means of the Proprietor's prerogative. The Lower House finally agreed to raze the first three charges. The Upper House agreed to join in asking the Proprietor to remedy the other grievances.[1] One of the privileged attorneys was impeached, but to no purpose,[2] for he was evidently a favorite of the Governor.[3] The Upper House acted with great arrogance toward the Lower and asked it why it did not pass certain laws.[4] Among other things the Lower House was told that the appointment of sheriffs belonged to the royal power of the Proprietor, and no act should be passed concerning it.[5] The slight check that the Assembly had striven to place on sheriffs was thus done away with. The act had not been observed by the Governor for several years.[6] The fees of officers had been complained of and the sheriff's fees were regulated. The Chancellor showed his desire for fees,[7] and, although a source of complaint,[8] his fees were not regulated. The Governor's pay, however, was changed from a poll tax of 25 pounds of tobacco to six pence per hogshead of exported tobacco.[9] Among the most important laws passed was one making tobacco a legal tender at the rate of three halfpence per pound for payment

[1] II. Assem. 179, 180, 181, 182, 183.

[2] II. Assem. 163, 167, 168, 169, 172.

[3] I. Calvert Papers, 264. [4] II. Assem. 190, 193, 194.

[5] II. Assem. 197.

[6] The sheriff's arbitrary exercise of power is shown in the election in Somerset County to this Assembly. II. Assem. 187.

[7] II. Assem. 186, 189. [8] II. Assem. 176. [9] II. Assem. 217.

The Lower House rejected one bill for the Governor's support and refused to confer with the Upper House as to the reason of their dissent, as it would be a breach of their privileges. II. Assem. 189, 190.

of money debts, with no refusal allowed.[1] The Proprietor having repealed the act appointing a public notary, the Governor, by ordinance, created the chief clerk of the Secretary a public notary.[2]

Charles Calvert now paid a short visit to England. He named Philip and William Calvert as Deputy Governors. His jealous fears of Philip Calvert had been calmed by the Proprietor's declaration that Charles Calvert, but not his deputies, could suspend members of the Council or add new members.[3] At the same time the quit-rents were raised to two shillings for every fifty acres.[4] During Charles Calvert's absence in England he raised the number of Deputy Governors to four. Philip and William Calvert, Baker Brooke and Jerome White formed a government by a kind of family council.[5] Office-holding in Maryland henceforth became more and more a family affair.

William Talbot, the nephew of Lord Baltimore, was appointed Secretary and Probate Judge of the province and also Public Notary for Maryland.[6] He was instructed to look carefully after escheated and forfeited lands, Proprietary manors and quit-rents, alienation and other fines.[7] The law and rules for escheats did not follow English practice, but were whatever the Proprietor pleased.[8]

Inducements were offered to settlers in the disputed lands on the Eastern Shore.[9] Again we find the separation of the Land Office in the appointment of William Stevens and James Weedon to grant, under restrictions, land warrants for the Eastern Shore.[10] A customs collector for the Eastern Shore was also appointed.[11] This year the sheriff's return of

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[1] II. Assem. 220.

Like the preceding Assembly, this one took care of its records by act, Assem. 209.

[2] II. Council, 49. [3] II. Council, 55. [4] II. Council, 54.
[5] II. Council, 66. [6] II. Council, 70. [7] II. Council, 72.
[8] Kilty's Landholder's Assistant, 176. [9] II. Council, 63, 78.
[10] II. Council, 79, 124. [11] II. Council, 83, 104.

tithables was not accepted, and it was ordered that the constables make lists of the tithables of their hundreds and deliver them to the Council.[1] For the first time the Governor appointed a Deputy Surveyor.[2] The most important constitutional change of the year was the restriction of suffrage.

The Period of Submission, 1670-1676.—During these years the Proprietor gained almost all he demanded from the province, especially in regard to the export duty of two shillings per hogshead. The Assemblies offered some resistance, although in the main they were very submissive. The last one before this period had been very unruly. In Virginia suffrage had just been restricted on account of alleged unruly proceedings and disturbances at elections.[3] Virginia influence was always marked in the action of Maryland. Restriction of suffrage may have been decided upon in the conference of Lord Baltimore with Charles Calvert in England about this time. In later years the example of England was cited as well as that of Virginia.[4] Charles Calvert can always be found in opposition to the poorer classes, and deserves not the respect which was accorded to his father. All we know of this restriction of suffrage is from the election writs issued to the sheriff in this year, which required the summons of all the freemen having "within said County Visible seated Plantations of fifty acres of Land at the least or Visible personal Estates to the value of forty Pounds Sterling at the least," to the county court, there to elect delegates of similar property qualifications to the Assembly. The poorer classes no longer had any representation in the Assembly. The Assembly now contained very few of the members who served in 1669. This Assembly was continued by prorogation until 1676, and almost the same members reappeared in that year. It is significant that these Assemblies gave the Governor but little trouble.

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[1] II. Council, 76.
[2] II. Council, 80.
[3] Burk's Virginia.
[4] Lib. R. R. 106.

The Assembly of 1671, while passing nearly everything demanded by the Governor, still maintained some of the independence of the other Assemblies. The Lower House immediately demanded of the Governor why all the members elected had not been summoned to attend. The Governor answered that the sheriffs of Kent, Dorchester and Somerset counties had asked him, in the name of their "poor counties," to summon only as many delegates as formerly, which he did.[1] This explanation satisfied the Lower House, and so a way was left open for the future summoning of such and as many members as the Governor pleased, a right that was to be fiercely disputed in future Assemblies and to be a constant source of irritation.

The time of the Assembly was largely devoted to passing the act giving to the Proprietor two shillings per hogshead of exported tobacco. The Lower House wished to make the tax twelve pence and to limit the operation of the act to three years, but the Upper House, by several concessions, induced the Lower to pass the act making the tax two shillings and extending the operation "dureing the Natureall life of the Right Honble Cecilius now Lord & Proprietary of this Province and for one Cropp more next after his decease."[2] This important act provided that one-half of the tax was to be expended in maintaining arms and ammunition for the defense of the province and in defraying other "necessary charges of the Government."

By the wording of the act it can be seen that the Governor and councillors were paid from this fund. The act also provided that no public levy should be laid without the consent of the representatives of the freemen in the Assembly; that tobacco was to be receivable for quit-rents and alienation fines at two pence per pound, which was quite a concession; also that the act granting the Muster Master-General a fee be repealed, and that the clause which made all the charges of such a war assessable on the inhabitants,

[1] Assem. 240, 241. [2] II. Assem. 249, 255, 256, 257, 258, 260, 284.

be suspended in the act for levying war within the province. All of these provisions were concessions of the Upper House to the Lower. What the preceding Assembly had striven to accomplish was obtained by this Assembly in exchange for the continuation of the tobacco tax. In an act establishing the value in Maryland of foreign coins it was especially provided by the Upper House that the two shillings per hogshead were to be paid in English money sterling. The exportation of money was strictly forbidden.[1]

An act was also passed against "divulgers of falce news," which was extended so as to mean any reports about the justices of the Provincial or the county courts.[2] This act was bound to prove of great service to the Proprietary government in suppressing any kind of disorder, and, with such a government, would certainly be used in a manner to awaken resentment.

An act was read for the "founding & Erecting of a School or College within this Province for the Education of Youth in Learning & Virtue," but the Lower House demanded that the teachers should belong to the Church of England, or else one should be a Catholic and another a Protestant, and the Protestants should have liberty to choose their teacher.[3] This was a moderate request, since Protestants were known to be the more numerous party, but the project was abandoned.

A naturalization act was proposed, but that also seems to have failed.[4] As usual, fees were considered. Those of the county, Provincial Court clerks, the county seal, the Coroner and the Chancellor, who always looked out for

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[1] II. Assem. 264, 286.

[2] II. Assem. 262, 263.

[3] II. Assem. 258, 260, 273.

[4] II. Assem. 249.

The effort of the Lower House to have the sheriff of Talbot County deprived of his office took up most of the session and is interesting. It shows how the county justices were often members of Assembly who would not if they had not been justices. II. Assem. 244, 246, 250, 251, 254, 265, 266, 267, 268, 269. This case again came up in the Assembly of 1674 (II. Assem. 258, 357), and again the sheriff is almost self-condemned.

himself, were regulated.[1] The powers of the County Commissioners were extended. They were empowered to levy tobacco for the payment of the county charges by an "Equall Assessment of the goods and chattels of the freemen and inhabitants" of the county.[2] This is the beginning of the present taxing power of the County Commissioners, by which all county taxation is levied.[3]

At the second session of this Assembly of 1671 the city of St. Mary's was for the first time represented. It had two members—John Morecroft, who had been so bitterly attacked by the Assembly of 1669, and Thomas Notley, who was a stickler for the Proprietor's privileges.[4] Notley was chosen Speaker.[5] The reasons are seen in a letter written by Charles Calvert to his father: "Mr. Notley is now Speaker of our Assembly; hee and Mr. John Morecroft beinge Chosen Burgesses for the Citty of St. Maries, And by that Meanes I gott him into the Assembly. Though Doctor Wharton bee a good understandinge Man yett Dr. Morecroft is much more for our purpose, being the best Lawyer in the Country, and has always been (upon other Assemblies) a great Assertor of yor. Lopps Charter and the Rights & Privilidges thereof, I durst not putt itt to an Election in the Countyes Butt tooke this way which I knew would certainly doe what I desired And now I haue gott Mr. Nottley into the Chaire, I haue Assured him, That with yor. Lordships Leaue, I am resolued to Keepe him there as longe as hee and I liue together, It is most Certaine that some of the Catholiques in the Assembly Did not behaue themselues as was Expected, hereafter they will I hope Endeauour to understand themselues Better And their owne Interest."[6]

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[1] II. Assem. 263, 292, 294. [2] II. Assem. 273.

[3] The importation of slaves was encouraged (II. Assem. 272); standard weights and measures ordered for each county (II. Assem. 279); and practically the same land laws were re-enacted (II. Assem. 276, 305) as those of 1663, which had been vetoed by the Proprietor as announced in 1669.

[4] II. Assem. 311. [5] II. Assem. 312. [6] I. Calvert Papers, 264.

It is easy to see why St. Mary's City, as it was called, obtained representation in the Assembly. It is easy to see that the prerogatives of the Proprietor and the interests of the Catholic inhabitants of the province were the chief objects of the solicitude of the Proprietor and his son the Governor. That the Catholics did not always act with moderation is apparent. In all the following Assemblies we find the Lower House, whenever it did not pass what the Governor wished, called to conferences by the Upper House, its reasons demanded for rejecting an act, and in certain cases the Governor made angry addresses to them. The Lower House was tampered with continually.

When assembled, the Lower House petitioned that the Governor should issue a writ for the election of a member from Dorchester County in place of a sitting member, a right which it soon declared belonged to the Speaker.[1] The Lower House wished to limit appeals from the county to the Provincial Court, in actions of debt and trespass, to cases exceeding six hundred pounds of tobacco, but the Upper House would not agree "in prohibitting Appeals from the County Court to the Provincial Court in any action whatsoever."[2] These small cases were very vexatious, but the Upper House was practically the Provincial Court, which fact explains everything.[3]

Baker Brooke was now appointed Surveyor General,[4] and in the instructions sent him he was ordered to hold courts of "Enquiry and Survey" once a year in each county to examine the right and title of any one's claim to land, whether any one held more land than he should, and what rents and services he should pay to the Proprietor. A yearly report

[1] II. Assem. 313. [2] II. Assem. 314.

[3] About all this session did was to strengthen the act forbidding clerks and sheriffs to plead as attorneys in their own courts, by including all sub-clerks and deputy sheriffs and enlarging the penalty. II. Assem. 322.

[4] II. Council, 85, 94.

of the proceedings was to be made to the Proprietor and the Receiver General.[1]

At about the same time the sheriffs, each for his own county, were directed to make a perfect rent roll and deliver it to the Governor.[2] William Talbot, the nephew of the Proprietor and Secretary of the province, appointed Robert Ridgely chief clerk of the Provincial Court (a place evidently well worth having),[3] and Register and Examiner of the High Court of Chancery and Keeper of the Lesser Seal.[4] The Council, on one occasion at least, ordered letters of administration issued.[5] It is therefore likely that Ridgely did not have powers of judge of probate, but that these went to the Council.[6] When Talbot's commission was revoked, the Chancellor was made probate judge and grantor of letters of administration.

Fendall was sued for the thirds of a vessel seized in 1659,[7] a charge trumped up on the basis of a rumor.[8] It was but a few days later (Dec. 6-15) that a certain Lewis was bound over to the Provincial Court for uttering seditious words.[9] At the same time action was taken against Gerrard, who now lived in Virginia, for taking an Indian from the province without the consent of the Governor.[10] An ordinance was issued erecting Worcester County,[11] and a high con-

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[1] II. Council, 95.
The Proprietor's manors are to be looked after, and for every 50 acres only 15 pole are to be surveyed on any creek or river. II. Council, 94.

[2] II. Council, 91.

[3] II. Council, 23.

[4] II. Council, 88.

[5] Lib. R. R. 14.

[6] A curious order of the Governor's reveals the fact that while Talbot deputized Ridgely as chief clerk, Ridgely employed a white slave to do all his work, thus showing that modern methods of holding clerkships were thoroughly understood at that time. Lib. R. R. 16.

[7] I. Council, 361.

[8] II. Council, 103. Morecroft was the Attorney General in this suit.

[9] Lib. R. R. 13.

[10] Lib. R. R. 15.

[11] II. Council, 108.

stable was appointed for it until a sheriff was named.[1] There was a disturbance in this county at that time.[2]

The sheriffs were directed to make lists of all escheated lands in their counties, with the quality of the land and the improvements upon it, and return them to the Governor.[3] In the next Assembly the Lower House objected to escheats being made after three years' non-payment of rent, and asked that all instructions to the Governor concerning land be published within six months after receipt by the Governor, and that the Proprietor take no advantage in the future from the act for deserted plantations.[4] Promise of the publication of land instructions was all that was obtained.[5] William Calvert was now appointed Secretary.[6] Grants of land were made to him, and he had the power of appointment of all the clerks of the county courts, except that Henry Darnall was to remain clerk of the Calvert County Court. Darnall was a relative of the Proprietor. Calvert County being the largest county in population, its clerkship was the most lucrative. Darnall was also elected to the next Assembly.[7] Baker Brooke's interests were looked after by the Governor, who increased his fees by a proclamation, afterward ratified by act of Assembly.[8] The Governor, however, was authorized by the Proprietor to name deputy surveyors, and he also appointed the Attorney General.[9]

The same Assembly again met in 1674, Notley being continued Speaker.[10] The Upper House proposed an act for the levying of war without the province, the expenses of such war to be levied upon the freemen of the province.[11] This was in direct violation of the act of 1671 for the sup-

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[1] II. Council, 107. [2] II. Council, 111. II. Council, 122.

[3] Ordinances forbidding the export of certain commodities now began to reappear (Lib. R. R. 34; II. Council, 105), and another ordinance established a public ferry. II. Council, 118.

[4] II. Assem. 356. [5] II. Assem. 372. [6] Lib. R. R. 23.

[7] II. Assem. 345. [8] Lib. R. R. 21; II. Assem. 372, 392.

[9] Lib. R. R. 23, 35. [10] II. Assem. 346. [11] II. Assem. 378, 380.

port of the government[1] and it was rejected by the Lower House.[2] The Lower House, doubtless knowing what was wanted by the Governor, proposed instead, that the act of 1671 be extended so that the two shillings per hogshead be paid not only to the then Proprietor during his life, but also to Charles Calvert during his life. The Proprietor,[3] Charles Calvert, wanted even more favors, but the Lower House refused to yield.[4]

The Lower House wished to know what laws had been assented to by the Proprietor since 1659, to which query the Governor made the unsatisfactory response, that he knew "no Laws assented to by the Proprietor but what are mentioned and can be found in the body of the Laws."[5] This was a direct evasion of the question. The Governor signed all laws, the "Lord Proprietor willeth these to be Laws," but this was not the Proprietor's assent. If the Proprietor assented the law could only be repealed by act of Assembly, whereas if he did not, a veto could be produced at any time, as was done in 1669. Thus there remained the large element of uncertainty as to the laws. But this strengthened the Proprietor's government. In 1674 the Lower House knew of only thirty laws assented to by the Proprietor.

The Quakers at this time presented a petition to the Assembly that they might be relieved from taking oaths, as was the case in the Carolinas, New Jersey, Rhode Island, and Jamaica, but obtained no relief.[6] The same subject was considered in the Assembly of 1675 in regard to the granting of letters of administration without oath, but no concession was obtained. In 1676 the Quakers again vainly asked relief.[7] The usual excuse, that the Proprietor's ideas on the

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[1] II. Assem. 284. [2] II. Assem. 381. [3] II. Assem. 381, 386.

[4] II. Assem. 382, 384.

The Lower House having repealed some laws, the Upper House demanded the reasons, which were given them. II. Assem. 358, 359, 361.

[5] II. Assem. 374. [6] II. Assem. 355, 356. [7] II. Assem. 492.

subject were not known, did not satisfy, for the Proprietor, the same Charles Calvert who had offered all the excuses, was actually in the province.

The Assembly of 1674 decided that members of the county grand juries should pay their own expenses and that none but freeholders should be summoned.[1] A poor man was not allowed to sit on the grand juries, nor could he have afforded to do so if allowed. Taxable persons were defined as all freemen above sixteen years of age, except ministers and priests, all native-born male children of sixteen years of age, all imported male servants of ten years of age, and all slaves, both male and female, of ten years of age. Sheriffs were to take bail[2] and to execute warrants and writs from public officers without fees.[3] The building of a State House and prison was resolved.[4] During the discussion as to this building, Charles Calvert demanded that the province erect him a brick house at public charge.[5] He also named St. Mary's as the proper location of the State House, refusing to consider a plan to have it erected in Anne Arundel County.[6] In passing an act for mending roads[7] the Governor tried to get a road past his own house.[8]

Another act was entitled "An Act to Reforme the Attorneys Councellors & Solicitors at Law of this Province to avoyde unnecessary Suites and Charges att Law." By this act only those attorneys named by the Governor could plead in the Provincial Court, and in the county courts only those

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[1] II. Assem. 392. [2] II. Assem. 411. [3] II. Assem. 399.

[4] II. Assem. 404. [5] II. Assem. 371. [6] II. Assem. 377, 378, 379. The Assembly also empowered the county commissioners to erect county courthouses at county expense. II. Assem. 413.

[7] II. Assem. 408.

[8] And this at a time when roads were scarce. II. Assem. 369. Besides the usual act to revive certain laws (II. Assem. 412), this Assembly passed an act to repeal certain laws, a new thing. II. Assem. 408. The act for court days was extended to embrace all the counties. II. Assem. 397.

named by the County Commissioners. The fees were also strictly regulated, with heavy penalities for overcharges.[1]

The Assembly of 1671 and 1674 met again in 1675. Notley was, of course, continued Speaker.[2] This Assembly did little but add another burden of taxation upon the people, and gave up in doing so what had been wrested from the Governor by the Assembly of 1671 and maintained by the Assembly of 1674, namely, that all charges of government should be borne by the Proprietor despite any law for levying war.[3] The expenses of a war were to be levied by an assessment per poll upon the taxables. Fifty thousand pounds of tobacco were to be levied by the Assembly during the year, whether for making war or peace. If the expenses should be more, they would be paid by the next Assembly.[4] The Governor and Council could levy war charges for the entire ensuing year from February to February.[5]

The Lower House had tried to fix this charge at twenty-five pounds of tobacco per poll,[6] but the Governor rejected this, saying he did not wish to be tied to any fixed sum.[7] The Governor was also given thirty thousand pounds of tobacco for entertaining the Council, of which nearly all were members of the Calvert family, during the twelve days of this session,[8] or, as a member of the Lower House put it, for keeping open house to all persons,[9] a method of gaining votes that is still known. The efforts of the Lower House to relieve the Quakers were of no avail, the Governor being adverse.[10] Cecil County was set off by the

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[1] II. Assem. 409.
About the time, we may notice in passing, Utye was made a councillor; he was not, however, summoned to the next Assembly. II. Assem. 382.

[2] II. Assem. 422. [3] II. Assem. 284, 386. [4] II. Assem. 462.
[5] II. Assem. 463. [6] II. Assem. 424, 446.
Even 15 lbs. was suggested. II. Assem. 444.

[7] II. Assem. 446. [8] II. Assem. 432, 455. [9] II. Assem. 454.
[10] II. Assem. 424, 427, 432, 444, 447, 448, 450, 455, 456.
The Lower House asked the Governor to have the Secretary

Governor, June 6, 1674,[1] but it had no delegates in this Assembly.

Cecilius Calvert, the second Lord Baltimore, died November 30, 1675. Charles Calvert became the third Lord Baltimore, Sole and Absolute Proprietor of Maryland. On the 4th of March, 1676, when the news reached him, he issued a proclamation declaring that his father was dead and that all sheriffs should proclaim Charles Calvert as Absolute Lord and Proprietor of Maryland.[2] All commissions, writs and processes were to continue as before. Baker Brooke was commissioned Surveyor General, Philip Calvert, Chancellor, and William Calvert, Secretary.[3] In fact, there was no official change, the appointments before this time having been what Charles wished. A new Assembly was called. The old one had been prorogued to this year.[4] Of this new Assembly we have only the journal of the Upper House. Of the six members of the Upper House five were members of the Calvert family, and the sixth was a great supporter of the Proprietor's privileges. The Proprietor was the presiding officer. Among the members of the Lower House were John Coode and Kenelm Cheseldine, who were to become better known.[5]

The Lower House presented as an humble petition for the future what in subsequent Assemblies was demanded as

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enter the laws made at the session of the Assembly in the book of laws (II. Assem. 440), being careful, as usual, of their records.

The usual attempt at regulation of fees was made. The fees of the county clerks were protected by the Upper House against the Lower House (II. Assem. 430, 448, 452), but the fees of the attorneys were again restricted. II. Assem. 432, 452, 467.

The sheriffs were relieved from taking bail (II. Assem. 434, 454, 458), and were ordered to seize tobacco for the quit-rents and public debts before seizing them for private debts. Lib. R. R. 50. The members of the provincial grand juries were to receive hereafter 2500 lbs. of tobacco for their expenses. II. Assem. 462. It may be noticed that the Lower House called itself a House of Commons (II. Assem. 440), and that the members refused to pay their own expenses. II. Assem. 458.

[1] Lib. R. R. 29. [2] Lib. R. R. 50. [3] Lib. R. R. 58.

[4] II. Assem. 435. [5] II. Assem. 481, 485.

an immediate right, namely, that four delegates having been elected by each county and but two of them summoned by writ to sit in this Assembly, "by which meanes," they say, "Some of the Inhabitants of this your Lordsps. Province Seem dissatisfied and that they have not theire free vote," in the future all who should be elected be summoned to sit, and if any die or are removed, new writs should be issued to fill the vacancies.[1] They distinctly acknowledged that it was the Proprietor's right to summon as many from each county as he pleased, and only begged the above favor. The Proprietor granted the petition. How well he kept his promise we shall see. But he declared that it was contrary to the late Proprietor's declaration for the settlement of Assemblies. He also declared that in the future every member of the Assembly should, at his entrance in the House and before the election of the Speaker, take an oath of fidelity to the Proprietor and to his heirs and successors.[2]

From this Assembly, as from preceding ones, Charles Calvert obtained concessions. First, all the tobacco then in his hands, for whatever purpose raised, was given to him.[3] The act granting the duty of two shillings per hogshead during his life was extended throughout the life of Cecilius Calvert, his eldest son.[4] This, it was said, was upon Notley's motion.[5] Thus the duty was made hereditary. An act "for the Security and Defence of this Province"[6] provided that all the expense of any war was to be raised by an equal assessment upon the persons and estates of the inhabitants of the province.[7] Persons enlisted in the trained

[1] II. Assem. 507. [2] II. Assem. 508. [3] II. Assem. 510.
[4] II. Assem. 510, 515. [5] II. Council, 141. [6] II. Assem. 557.
[7] Provision was also made for pensions for disabled soldiers and the widows and children of soldiers, which were to be paid yearly from the public levy. When the levy was laid by the Governor and Council one delegate from each county was to be present to see that the tobacco was defrayed for the necessary charge of the province, a provision resisted by the Proprietor until the Lower House declared that these delegates would have no power to refuse any part of the levy. II. Assem. 492, 497, 498.

bands, who neglected to appear at the training place when summoned, were fined fifty pounds of tobacco, which went to the Proprietor. It was proposed at first to give these fines to the County Commissioners, but they were finally given to the Proprietor. The Proprietor wanted the fine to be one hundred pounds of tobacco for the first offense and two hundred pounds for every subsequent one, and that the fines be given to the "Lord proprietary or his Chiefe Governr. and Councell and Not to the Commissioners of any County, it being inconsistent With his Lordships Honor."[1]

The Quakers received scant consideration in this Assembly.[2] A large part of the session was taken up by the impeachment of Trueman for killing several Indians who had come into his camp under a flag of truce.[3] He was found guilty, but was protected by the Lower House, which wished to impose a fine only and claimed to be the judge of his punishment in drawing up the bill of attainder, a view disputed by the Upper House.[4]

The question of fees was again discussed. The Lower House decided that a committee, together with the Chancellor and Secretary, should draw up a law for the fees of all officers whatsoever, so that it might be confirmed while the Proprietor was still in the province.[5] Both the Chancellor and Secretary claimed fees between them.[6] The act as passed limited the fees of the Chancellor and Secretary, the Surveyor General and his deputies, the sheriffs, the coroners, and the criers of the county courts.[7]

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[1] II. Assem. 491. [2] II. Assem. 492. Another act enjoined the constables to take the list of taxables in their hundreds during the last part of June. Taxables were all males of sixteen years of age, except ministers, priests, and paupers, and all female slaves over 16 years of age. II. Assem. 538.

[3] II. Assem. 474, 475, 476, 481, 482, 485, 493, 494.

[4] II. Assem. 500, 501, 503, 511, 512. [5] II. Assem. 477.

[6] II. Assem. 489, 499. [7] II. Assem. 532. It will be noticed that the act is practically taken up with the Chancellor's and Secretary's fees. At this time one man could be sheriff, coroner, and deputy surveyor. II. Assem. 499. An act

The property of a certain Robert Cager had been left by him for the maintenance of a Protestant minister in St. George's and Poplar Hill hundreds, but it was settled upon the mayor, recorder, aldermen and common council of St. Mary's City and their successors. The Proprietor declared he knew no other way, St. Mary's being a corporation and capable of receiving the grant for the intended uses.[1]

The whole body of the laws was reviewed from at least 1640, and an act was passed, one part of which repealed a great number of laws and another part absolutely confirmed many others, in all one hundred and twenty-seven acts being repealed and seventy acts were confirmed.[2] An act was passed, as usual, reviving certain temporary laws.[3] The Proprietor refused to assent to the laws of this session as perpetual but only as temporary laws.[4] Of the perpetual laws, many were for the benefit of the Proprietor[5] and confirmed

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was passed prohibiting the importation of convicts into the province (II. Assem. 540), and another act limited suits for debt in the Provincial Court to sums over 1500 lbs. tobacco, except upon appeal from a county court. II. Assem. 537. Appeal at the common law was declared unusual and not according to the laws and practice of England, but since convenient and necessary in the province, and admitted by the justices of the Provincial Court to be in the nature of a *habeas corpus* to remove the case from an inferior to a superior court, it is so recognized. II. Assem. 562.

[1] II. Assem. 498, 530.

The city was to see that the profits of the property were devoted to the uses specified. It may be seen by the wording of the act that a clergyman was already there. The Lower House desired that the delegates' charges be assessed upon the whole province, and not for each county to pay for its own delegates, since some counties contained many more taxables than others, and the number of delegates from each county was the same. This was agreed, with the exception of traveling expenses, which were still to be borne by the counties. II. Assem. 509, 511, 514, 554.

[2] II. Assem. 542. [3] II. Assem. 555. [4] II. Assem. 512.

[5] Act touching judicature, act of recognition, act for the punishment of certain offenses, act concerning the levying of war within the province, act for the speedy payment of debts due the Proprietor, act concerning deserted plantations, act for the taking the oath of fidelity to the Lord Proprietary, the oath of fidelity to the Lord Proprietary.

his privileges. The oath of fidelity seemed especially hard to certain portions of the people, as we shall further see. The act for church liberties, passed in 1640, was confirmed. This, we may feel assured, was not very pleasing to the Protestants at a time when the Catholics in England were being restricted in various ways. The Act of Toleration was also confirmed. This again was more beneficial to the Catholics than Protestants.

The Rebellion of 1676.—Of the disturbance in Maryland during this year no mention is made, even by McMahon.[1] There seems to be an entire ignorance of the fact that there was a rebellion. Maryland is congratulated by her historians on having escaped the troubles that distracted Virginia. But there was a rebellion, nevertheless. Bacon's rebellion in Virginia had a profound influence upon Maryland, where much the same causes for popular discontent existed. That the Maryland rebellion was not as formidable as that in Virginia was due to the absence of any such a leader as Bacon, whose death was the knell of rebel hopes in both provinces. The use of the poll tax, the restriction of the suffrage in 1670, the heavy taxation, and the common idea that the provinces were but poorly protected against the Indians by the Governors,—all these causes of discontent existed in both provinces, and in both they caused a rebellion.

At this point the family connections of the Proprietor should be examined for a proper understanding of the situation. Upon the death of Henry Sewall, Secretary of Maryland, Charles Calvert married his widow, who was a daughter of Vincent Lowe. By Henry Sewall she had five children—Nicholas, Elizabeth, Anne, Mary and Jane. Nicholas married a daughter of William Burgess, Elizabeth married Dr. Jesse Wharton, Anne married Colonel Ben-

[1] It is but just, however, to state that McMahon never saw Libers RR, RRR, and Council Book 1677-1683 of the Council Proceedings, all of which were in the possession of John P. Kennedy, who never put them to any use. They were recovered in 1895.

jamin Rozier, Mary married Col. William Chandler, and Jane married Philip Calvert. The dates of these marriages are known only approximately. These various unions are really of great significance, as every one who became related to the family soon obtained an office. The family being of moderately large proportions, the government of the province became a family affair in more ways than one, to the great discontent of outsiders. Elizabeth had been married to Dr. Jesse Wharton; accordingly Wharton was appointed Deputy Governor when the Proprietor went to England. The appointed Governor was Cecilius Calvert, the Proprietor's eldest son, who was only nine or ten years of age. He exercised no power, but simply drew a certain amount of fees. Philip Calvert, William Calvert and Baker Brooke, all close relatives of the Proprietor, were continued in their offices of Chancellor, Secretary and Surveyor General. Wharton was the Chief Justice.[1] Samuel Chew, Vincent Lowe, the Proprietor's brother-in-law, Thomas Notley and Thomas Taylor, favorites of the Proprietor and strong upholders of his privileges,[2] were appointed councillors. The changes from this time until 1689 put even more members of the family into office, and created more offices into which to put relatives.

Leaving the government thus established, the Proprietor sailed for England in the spring of 1676. He had been gone but a few days when the Indian war broke out that was the immediate cause of Bacon's rebellion in Virginia. The Five Nations, especially the Senecas, had often before made inroads upon the province. Having received a severe check in their Canadian forays,[3] they turned their attention to the English. The war in Virginia was fought mainly against nearer tribes of Indians. In Maryland the Senecas seem to have been the chief enemies.[4] Before the first of

[1] Lib. R. R. 84. [2] Calvert Papers, 264; II. Council, 141.

[3] Parkman's Ancien Régime.

[4] Rewards were offered to friendly Indians of five match-coats for every Indian prisoner they should deliver to the English, and

August Wharton died, and by his will named Notley Deputy Governor,[1] as his instructions ordered him to do.[2] The Susquehanna Indians asked for peace, and it was resolved to treat with them, but their relations with Virginia were first to be ascertained.[3] Here we begin to see indications of Bacon's rebellion, in Notley's expressed doubt as to what really was the government of Virginia.[4] A letter signed by Notley, Philip Calvert, William Calvert and Baker Brooke was sent to the Proprietor, in which they stated that they suspected Col. Bacon would pursue the Pascattoway Indians into Maryland, as a pretext to enter the province and "uphold young Giles Brent's vain title to his mother's crown and scepter of Pascattoway," thus putting "that Brute savage" at the head of all the needy and desperate persons in those parts, to the great disquietude of the province.[5] An early supply of arms and ammunition was accordingly asked.[6]

The head men of the Pascattoway and Mattawoman Indians having been sent for, the Council told them that a man named Bacon might come into the province to annoy them, but that he had no license to do this, and as he had no license, they could defend themselves against him without blame. The Indians were also told not to go into Virginia,

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three match-coats for every scalp. Lib. R. R. 61. The Indian scare is also shown by the fact that despite the general contempt entertained for Indians, orders were given that if any private soldier should strike a friendly Indian he should ride the wooden horse, run the gauntlet, or endure some similar punishment as a court-martial might direct. Lib. R. R. 77. An order was passed for the people to fortify their houses, but the number of men in such houses was limited to ten. A council of war was ordered. Lib. R. R. 77.

[1] Lib. R. R. 87. [2] Lib. R. R. 86. [3] Lib. R. R. 95.

[4] Lib. R. R. 96.

[5] Young Brent's mother was Empress of the Pascattoways. Brent's motive in marrying her was perhaps the expectation of controlling the large tract of land set apart for these Indians by the Proprietor.

[6] Lib. R. R. 98.

as that would give Bacon a pretext to attack them. They were urged, if they had murderers among them, as the Virginians said, to hand them over.[1]

It has been seen that the Council feared an invasion by Bacon in support of Brent, who would put himself at the head of all needy and desperate persons. On the fourth of September, less than three weeks after the talk with the Indians, the Governor issued a proclamation against Davyes, Gent, Hasleham, Pate (perhaps a relative of that Major Pate at whose house Bacon died) and others, for having contrived a seditious paper[2] threatening the subversion of the Lord Proprietary's government, as well as of the constitution of the Assembly, the true preserver of liberties. All this, it was claimed, tended to the ruin of the freeholders and housekeepers, and the taking away of liberty and true property in lands and goods. The proclamation went on to state that they had gathered together sixty armed men in Calvert County to extort certain grants and immunities from the Governor and Council which were not in the power of the Governor and Council to grant.[3] These demands, the Governor announced, he would place before the next Assembly, and he ordered the mutineers to disperse. This offer was rejected by Davyes and the others, the Assembly being packed in the interest of the Proprietor.

Bacon's Rebellion in Virginia was now (September) at its height, and it seemed as if the popular party would gain everything. In Maryland also the popular party expected to make great gains. The Governor ordered the arrest of Davyes, Gent, Hasleham and Pate, who, according to Virginia testimony, were men of most reputable character,[4] and offered pardon to the others if they promptly submitted.

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[1] Lib. R. R. 99, 100.
The Council offered to include them in the treaty with the Susquehannas, but the Indians refused, and on being asked if they would march against the Susquehannas, expressed entire readiness. Lib. R. R. 100.

[2] Certainly issued before September 1. Lib. R. R. 105.

[3] Lib. R. R. 102.

[4] Force's Tracts, Vol. 1.

In a proclamation by the Governor as early as the first of September, it was stated that the seditious paper just noticed had been read to the troops under Henry Jowles by force of arms.[1] This statement shows the sympathy of the troops for the movement, and perhaps the sympathy of Jowles, if we consider the part he played in 1689.

But suddenly the whole aspect of things was changed by the death of Bacon. The Virginia rebellion, deprived of its leader, immediately collapsed, and the Maryland rebellion was also at an end. The Governor appointed a special court to inquire into the late mutinies and seditions.[2] A remonstrance of the Governor and Council to the people was published, which shows the causes of complaint and silently refuses relief.[3] The heavy taxes were declared to be due to the Indian wars, the building of the State House and the Davyes rebellion. As to freemen of no property having no vote in electing delegates to the Assembly, the same was true at this time in Virginia and Barbadoes, and in England, where it was also true of women with land, or any one owning personal property and not within a corporation. The Governor and Council promised, however, to ask the Proprietor to let all freemen vote in the election of delegates to the next Assembly, the Proprietor alone having the power to allow this. In regard to the complaint that the poor paid as heavy taxes as the rich, the Governor and Council replied that they each paid for their head and the rich paid also for their servants' heads. That the same system of taxation was used in Virginia and the West Indies, but if it was wrong it could not be changed by the Proprietor nor by the Governor and Council, but only by an act of Assembly, and no doubt the Proprietor would joyfully consent to an act changing the system of taxation, and would be glad to see permanent and not transitory riches. These complaints were much the same as those in Virginia, where heavy taxes for the benefit of officials and for Indian wars

[1] Lib. R. R. 105. [2] Lib. R. R. 103. [3] Lib. R. R. 106.

not meant to hurt the Indians, the restricted franchise and the poll tax, were popular grievances. It was also demanded that all those born in Virginia be considered free-born subjects of England. This same demand was repeatedly made in Maryland. Laws had been made in Maryland as early as 1663 that the possession of property be confirmed in the occupants.[1] It was further demanded in Virginia that the export duty of four shillings per hogshead tobacco be applied to defraying the expenses of the government and not appropriated by the Governor. In Maryland, as has been seen, this same duty was levied, and it was charged that very little of it went to pay the expenses of the government.[2] The poll tax, which imposed the same burden upon the poor and the laborer as upon the rich, was felt severely and by the same persons who had lost the right of suffrage. It is this tax that the Maryland Bill of Rights, one hundred years later, declared to be "grievous and oppressive"; its imposition was prohibited.[3] To refer the taxation of wealth and the widening of the elective franchise to the Assembly, composed as it was of the wealthier classes, was clearly the destruction of both projects of reform.

The causes of dissatisfaction in Maryland may be learned from a paper that has received hitherto but scant attention, the famous "Complaint from Heaven with a Huy and Crye and a petition out of Virginia and Maryland."[4] This is an extraordinary document, full of hatred for Papacy and the Papists, but containing more truth in its charges than is usually supposed. The writer or writers of this paper show

[1] Burk's Virginia, Vol. II., 162.

[2] Burk's Virginia, 242; Virginia Historical Magazine, II., 2.

[3] Not only are poll taxes forbidden, but the famous Art. 15, Md. Bill of Rights, declared that every one shall be taxed according to his real worth in real or personal property. The unpopularity of the poll tax in 1776 was due largely to its application to the support of the Established Church.

[4] II. Council, 134.

their Puritanical leaning in urging that New England was a good example of the way in which Maryland should have been settled.[1] Heavy taxation is complained of again and again. Great bitterness is shown over the taxes for the Indian wars. The Proprietor was charged with waging war simply for his own benefit and with having a desire to protect the Indians. The names of the members of the Provincial Court (identical with the Council) were given and the charge of nepotism (a charge entirely true) was made. The Governor (the Proprietor's son), the Deputy Governor, the Secretary, the Surveyor General, were all kinsmen. What seemed even worse, they were all Catholics. Other members of the Council, for example, Lowe, the Proprietor's brother-in-law, were inclined to Catholicism and not apt to oppose the Proprietor in anything. This was sure to be considered a grievance in a country where the Protestants outnumbered the Catholics.

The Assembly was then attacked. The charge was made that of the four delegates elected from each county, but two, selected for their pliancy to the wishes of the Proprietor, were summoned to the Assembly. This charge was true, and it was to be a fruitful source of contention in subsequent years. Another charge was the manner in which the Upper House, having the same members as the Provincial Court, ordered laws to be passed; and the pressure used, if the Lower House showed any resistance to the wishes of the Proprietor, was another true charge. The temporary nature of the laws, in consequence of the Proprietor's veto, was complained of, also the constant creation of new and heavy fees.

The corruption of members of the Lower House by offices was alleged. The charge was made that Taylor, while Speaker, was made a Councillor and Major General for having urged the export duty of two shillings per hogshead of tobacco. Notley, for having urged, while Speaker, that

[1] II. Council, 140.

this duty be made hereditary, was made Deputy Governor upon Wharton's death. The charges were undoubtedly true. The entire history of this export duty was discussed, from the act of 1647 to that of 1676, though not with accuracy. The paper declares that no complaint was made against real and necessary taxes, but only against those "to maintain my Lord and his Champions in their prince-ship." The export duty, quit-rents, port duties, fines, escheats, entering and clearing of ships, licenses and fees, were named as sources of revenue for the Proprietor, besides a large number of Proprietary manors, so that to the poor man the taxes were unbearable. Yet there was no protection against the Indians.

The Proprietor was charged with open violation of several laws, such as the one whereby sheriffs were to be appointed from certain nominees suggested by the County Commissioners, to serve for only one year. This act was certainly disregarded. The establishment of the towns by the Proprietor was denounced. They had been erected on "50 or 100 acres without comons or possibility for poore people to live in." That a great many settlers came as servants to others was confessed, but it was claimed they were entitled to equal consideration.

The question of taking the oath of allegiance to the Proprietor was given much attention. The Proprietor was forcing all to take this oath, contrary to the agreement made between the Proprietor and the Puritans in 1658, whereby the oath of fidelity was not to be pressed upon the people, but an agreement to submit to and aid the Proprietor. All they owed to the Proprietor, men claimed, was fealty as tenants, while allegiance and fidelity were due only to the King. But the Proprietor arrogated to himself royal power. He set up his coat-of-arms in all the courts. He administered justice in his own name and denied all appeals to the King. And yet for refusal to take the oath of fidelity "they begin to hang and fine people." In a remonstrance issued to the people the public grievances were

acknowledged and promises were made that all the elected burgesses should be summoned to the Assembly. Reference was also made to the proclamation[1] during the Indian war, by which only ten men were allowed to fortify themselves in any house, under penalty of being treated as rebels, an order no doubt due to the threatening attitude of the common people.

Maryland priests were accused of communicating with French priests living among the Five Nations, who were making forays into the province. The fear that in a war with France the Protestants might be attacked was distinctly expressed—a foolish fear, it seems to us now, but at that time it was very natural. In view of any such war the paper made an extraordinary proposal: that a Governor, "a Vice Roye or Governor Generallissimo from his Majesty," be appointed over all the colonies. Thus Maryland can claim the historic honor of suggesting military unity for America at this early date.

Besides all this, some immediate measures of relief were asked: (1) That the King take the government of Maryland and appoint Governors, from whom the oath of allegiance and supremacy should be required. (2) That all disputes between the Proprietor and the people of the province should be decided by the King and Parliament. (3) That the two shillings per hogshead of tobacco, or any future duty, should be employed in supporting the Governor and defraying public expenses, such as the building of forts and the maintenance of troops. (4) That the Proprietor should not be allowed to oppress his tenants, but receive his quit-rents in tobacco at two pence per pound, as there was no other money in the province. (5) That Protestant ministers, free schools and glebe lands, should be established in every county and maintained by the people. Also that the election of delegates to the Assembly should be by the freemen, and that those delegates should have free votes in the Assem-

[1] Lib. R. R. 77.

bly and not be forced to pass acts by "respect, persuasion or compulsion." (6) That, in case of any emergency, the freemen should have free appeal to the King.[1] The act for taking the oath of fidelity to the Proprietor, and the oath itself, were then given in full, together with the punishments for mutinous speeches and attempts, with and without force, against the right and title of the Proprietor.

This petition, addressed to the King, was of no avail. It revealed sympathy with the movement in Virginia, to which the King was opposed. Measures hostile to Catholics could not gain the favor of a king who was himself a Catholic. The document was most probably written by members of Fendall's party. Gerrard's residence in Virginia[2] was, perhaps, a connecting link between the Virginia and Maryland movements. Perhaps Fendall himself assisted. Its intimate acquaintance with the proceedings during his term of office as Governor makes it probable. Certain it is that most of the complaints were true and in themselves sufficient causes for dissatisfaction. They were destined to overthrow the Proprietor's government when the favorable opportunity came in 1689.

In a letter of the Governor to the Proprietor, dated January, 1677, fear was expressed lest a rebellion should break out during the coming summer. The heavy taxes of 1676 and 1675 had "given occasion for malignant spirits to mutter." The Governor declared the hanging of Davis and Pate had terrified the people. There was now peace, "though never Body was more repleat with Malignancy and Frenzy then our people were about August last, and they wanted but a monstrous head to their monstrous body."[3] The prospects for peace, however, seemed bright since Bacon's rebellion had been crushed. He further de-

[1] The King was asked to send over six or seven hundred Scotchmen, to be settled at the head of the bay as a bulwark against the French and Indians.

[2] William and Mary Quarterly, Vol. IV., 1, p. 36.

[3] II. Council, 153.

clared that new men must be placed in power in Virginia, since the old ones would never agree with the common people.[1] He did not see the truth, that the same condition of things prevailed in Maryland. It was but a few days later that the Governor ordered the arrest of all persons fleeing from Virginia.[2] Nevertheless some Virginians received protection in Maryland. Among them was Nathaniel Bacon, Sr.[3]

The letter of John Yeo, a minister in Maryland, to the Archbishop of Canterbury, asking that Lord Baltimore make provision for the maintenance of ministers of the Established Church, is worth noting. The Committee for Trade and Plantations, considering that no provisions had been made for the maintenance of ministers in Maryland, called for a conference with Lord Baltimore. A short time after this, Lord Baltimore was asked to give an account of all the Protestants in the province, for example, how many congregations they would make and how much each parish would pay to support a minister.[4] The number of Dissenting preachers in Maryland was also asked. Lord Baltimore answered that the greater portion of the inhabitants of the province were Dissenters, the members of the Church of England being few in number, so that it would be very difficult to pass a law for establishment.[5] This was an extraordinary statement in view of the fact that such a law had already been passed by the Lower House at one time and discussed at another time, although in both cases defeated by his opposition. The Governors of Maryland had been expressly forbidden to assent to any such law. Such legislation was easily passed in 1692 when the Proprietor had no longer power to prevent it.[6] The committee decided that provision should be made for ministers of the Established Church, "to which," the account says, "my Lord

[1] II. Council, 154. [2] Lib. R. R. 109. [3] III. Council, 168.
[4] II. Council, 252. [5] II. Council, 133.
[6] It should be remembered, however, that no Catholics were allowed to vote or sit in this Assembly.

Baltemore seemed to consent." It is to be observed, however, that he did nothing.

In 1676 the Committee of Trade and Plantations had sent inquiries concerning Maryland to Lord Baltimore, of the most comprehensive kind,[1] to which he made answer in 1678,[2] carefully avoiding any mention of the export duty, declining to give an account of the revenues touching his own property, and insisting that there were scarcely any members of the Church of England in the province. He even tried to lead the committee to believe that the Act of Toleration was passed as soon as the colony was founded, instead of fifteen years later, as was actually the case. The outcome of all this agitation amounted to nothing. Lord Baltimore remained bitterly opposed to any act establishing the Church of England.

The Struggle between the Proprietor and the Assemblies, 1676-1684.—During this period the regulation of the election of the delegates to the Assembly was the chief, though not the only cause of dispute. Evidences of the state of unrest then existing in Maryland and Virginia are clearly seen. Several matters of minor importance may be noticed. The declaration of the Governor, that an act of Parliament of 1677[3] was in full force in Maryland, shows how legislation could be made for the province by such declaration without consent of the Assembly.[4] The county justices were ordered to make out the list of tithables,[5] the historic beginning of the power still exercised by the County Commissioners to sit as an Appeal Tax Court. A law of trespass, that is still in force, was then ordered.[6]

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[1] II. Council, 128. [2] II. Council, 264.

[3] Against nuncupative wills. [4] Lib. R. R. 158. [5] Lib. R. R. 124.

[6] Hunting without a license was forbidden, nor was a license to be of any force on any man's land without his permission. Lib. R. R. 125.

Philip Calvert, although Chancellor, was empowered by the Proprietor to issue writs in the Court of Chancery in his own cases (Lib. R. R. 145), and the sending in of the alienations of land was pushed. Lib. R. R. 147.

An Assembly was called in 1678, to which all four of the elected delegates of each county were summoned.[1] To this Assembly Fendall was elected by Charles County in place of a certain Allen, deceased. This caused Notley to order the sheriff to announce to the electors that if they obstinately insist on electing Fendall to the Assembly they would lose a member, for, as had happened once before, he would not be allowed to take his seat.[2] This election shows the continued popularity of Fendall.

A Committee of Privileges and Elections was appointed to examine into the election returns and anything done against the privileges of the Lower House.[3] The defective records do not allow the proceedings of this committee to be followed very closely. The opinion of the House was asked by the committee, whether it was contrary to its privileges that any freeman, no matter of what estate, should be deprived of his vote. It is impossible to say what the answer of the House was to this question,[4] but an act passed by this Assembly continued the property qualifications. The committee asked if it was against the privileges of the House for a sheriff to sit in it during his term of office. To this the House must have answered it was against its privileges, for the committee subsequently reported that a sheriff was sitting in the House, contrary to its privileges.[5] The committee also asked whether the Attorney General could sit in the Lower House; whether its privileges were not infringed by the non-calling of all elected members to the last Assembly, and if it was not against its privileges that no one had been elected in place of a member who had died. To the first of these questions the Lower House seems to have answered that the Attorney General could sit; to the second it declared that its privileges were infringed, and to the third it answered that the Governor be asked to have another

[1] Council Book, 1647-1683, 41. [2] Council Book, 1677-1683, 44.
[3] III. Assem. 6, 10. [4] III. Assem. 12. [5] III. Assem. 17, 19, 31.

member elected.[1] These things illustrate the temper of the Lower House.

An act directing the election and summoning of delegates to the Assembly was passed,[2] the Upper House taking care to preserve the representation of St. Mary's City, but yielding to the resistance of the Lower House to a more stringent property qualification.[3] This act simply recognized existing custom. The property qualification was made the same as that provided by the writ of 1670, viz. a freehold of fifty acres of land or a visible personal estate of forty pounds.[4] The delegates from St. Mary's City were to be chosen as before, by the Mayor, Recorder, Aldermen and Common Council of the city. No sheriff, deputy, or ordinary-keeper was to be elected. Four delegates were to be elected by each county, and they were bound to appear at the meeting of the Assembly without further summons. Neglected or illegal returns made by sheriffs were to be punished by a heavy fine. The Proprietor refused to assent to the provision of this law that four delegates be summoned from each county, and declared that, in the future, there should only be two delegates from each county.[5] This caused a contest with the Assembly of the year 1681, the same Assembly that made the law. As usual, the Lower House insisted on its privileges.[6]

The Proprietor having asked for an act of recognition of the Proprietor's power, so that soldiers might be better regulated, the Lower House demanded a copy of the charter and insisted that the Upper House sign it as a true copy. This the Upper House refused to do. The Lower House finding that an act for milita was all that was desired, consented to this, but expressed the desire that a true copy of the charter be made and placed in the Secretary's office.[7]

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[1] III. Assem. 17. [2] III. Assem. 60. [3] III. Assem. 24, 25, 31.

[4] Bancroft, Vol. I., 439, totally misapprehends this act. It is impossible to see where he obtained such a view of it as he presents.

[5] Lib. R. R. 184. [6] III. Assem. 33, 34.

[7] III. Assem. 5, 6, 9, 10, 11, 12, 13, 14, 15.

The act for militia was then taken up and discussed.[1] There was but little change from a previous act of 1676. Priests, delegates, magistrates and constables were exempted from service. Booty was to be equally divided among the soldiers. Provisions were made against exaction by press-masters, and the expenses of any war are to be levied by equal assessment upon the taxables by the Assembly. To prevent the expense of too frequent meetings of the Assembly, however, the Governor and Council were empowered to levy the necessary charges, not exceeding 50,000 pounds of tobacco yearly.

The Lower House also passed an act that no sheriff should hold office longer than one year, according to the customs of England, but the Lower was induced by the Upper House to allow a longer term if the sheriff produced a certificate from the county court of just execution of his office, and provided no just causes of removal existed.[2] The Upper House tried to exempt Charles County from this law. That men were long-continued in this office and also as County Commissioners was true before this and afterward, and it was a great cause of complaint. The county courts were empowered to make rules, with fines on their non-observance, such fines to be used in the maintenance of the poor, but the proposal of the Lower House to give them power to hear and determine all civil causes whatsoever was defeated by the Upper House.[3] An act for the administration of estates without taking oath was defeated by the Upper House as usual.[4]

The following year Notley died,[5] but the Proprietor being

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[1] III. Assem. 18, 29, 34.

[2] III. Assem. 36, 39, 40, 68.

[3] III. Assem. 14, 23, 28, 70.

Fees were discussed as usual (III. Assem. 19, 49, 50), and an act passed limiting the fees of the clerks of the county courts. III. Assem. 73.

[4] III. Assem. 48.

It is hard to say whether the delegates' expenses were paid by their respective counties or by the province. III. Assem. 13, 46.

[5] Calvert Papers, 311.

in the province, no new Governor was named. During this year there was a quarrel of some kind between the Proprietor and Christopher Rousby.[1] Vincent Lowe, the Proprietor's brother-in-law, was named Surveyor General.[2]

Fendall was now again found in trouble. It was charged that he had made several seditious speeches. The evidence against him was that he had said he had been in much trouble and had suffered greatly in his estate but he hoped the time was coming for him to right himself. Also in talking of the troubles in England and the rumor that a frigate was coming after Lord Baltimore, he said it was useless, for if but three words were sent from England he could easily send Lord Baltimore to England. Another testified Fendall had said that he had been a great sufferer by the Chancellor, and that he believed the late poisoning of the people in St. Mary's was done by the Papists. Still another testified that Fendall said he had been a great sufferer through the Proprietor, the Chancellor and Wharton, and that he would have risen against Wharton if he had lived longer, but that he, Fendall, by threatening speeches had scared Wharton to death. About all that can be said with certainty from this evidence is that Fendall had said he had been a great sufferer, but it was sufficient to cause an order for his arrest. He fled, however, and the matter must have been patched up some way, as he soon afterward returned to the province.[3]

Another interesting matter was the trial of Dr. Barree for saying, as was proved by many witnesses, that a troop of one hundred Catholics had been formed to cut off all the Protestants.[4] The point to be noted is that he was himself a Catholic, and so the spread of such rumors by Protestants cannot be very surprising. Such rumors did arise, that the Proprietor furnished shot and powder to the In-

[1] Council Book, 1677-1683, 68.
[2] Council Book, 1677-1683, 80, 81, 82, 83, 84.
[3] Lib. R. R. 167.
[4] Council Book, 1677-1683, 97, 98, 99, 100, 101.

dians to kill the Protestants, that he sent letters to the Senecas and the French, that the forty Irish families coming would be forty thousand Irish Papists to cut the Protestants' throats.[1]

A special court, consisting of Philip Calvert the Chancellor, William Calvert the Secretary, Henry Darnall and William Diggs, was appointed by the Proprietor to try all murders, insurrections, rebellions, mutinies, seditions, burglaries, unlawful meetings, and speaking of words against "Us or our dominion,"[2] but there is no evidence to show that such a court ever sat.

The proclamation now issued for the holding of an Assembly contained the Proprietor's dissent to the election law of 1678, two delegates from each county being declared sufficient,[3] which fact caused considerable discontent, the people holding that the law of 1678 could not be thus overridden.[4] The complaint was also made that anything said by a Protestant was immediately carried to the Proprietor. Undoubtedly the so-called Papist Plot in England created much excitement in Maryland, as did likewise the bill to exclude the Duke of York (James II.) from the succession to the crown.

It will be seen that occasion was soon contrived to have Fendall again arrested. The Assembly was not called until August, 1681, when the Proprietor made his declaration that there should be only two delegates from each county. He also issued a proclamation about the same time for the enforcement of the laws against divulgers of false news.[5] The cause of this proclamation, as stated by the Proprietor, was the attempt of certain evil-disposed persons to stir up the inhabitants of Maryland and Northern Virginia to mutiny.[6] Fendall and Coode he had ordered to be arrested as "two

[1] Council Book, 1677-1683, 175, 207, 226, 237.
[2] Council Book, 1677-1683, 181.
[3] Council Book, 1677-1683, 201.
[4] Council Book, 1677-1683, 225.
[5] Lib. R. R. 186.
[6] II. Council, 280.

Rank Baconists," and he declared that the people of Virginia were as ready as ever to rebel. Fendall, who had great influence over the "Rascales of the North parts of Virginia," would have joined Bacon but for Notley's vigilance. The trials of Fendall and Coode will be noticed later. Much of the disturbance in Virginia was due to the attempt to establish towns. The Proprietor himself wished to do the same in Maryland.[1]

When the Assembly met the Proprietor asked for a severe act against "those wicked and Malicious persons who spread lies and false stories to the disquiet of good people, and the disturbance of the Government." The reason he had not called the Assembly earlier, he declared, was because the expenses caused complaint and that was the cause of Davis' rebellion in 1676.[2] He also declared that he had just nipped in the bud another rebellion. This address shows the unrest still prevailing in the province. An act was prepared against divulgers of false news by the Lower House, but it was rejected by the Upper as not providing sufficient punishment.

The Proprietor asked the Lower House not to allow Coode, who was accused of mutinous and seditious speeches tending to breach of the peace, to sit as one of its members. The Lower House said it would consider the matter and asked for the charges, which the Upper House refused to give, simply insisting that Coode, being accused of breach of the peace, was incapable of sitting as a member of the Lower House.[3]

The Lower House did not further consider the matter at that time, but insisted on the election of new members to fill the vacancies caused by death or otherwise. It was decided that the Speaker should issue the warrants according to the precedent of the Lower House of Parliament in England, and the Proprietor was asked to name some officer to

[1] Burk's Virginia, 229.
[2] III. Assem. 110.
[3] III. Assem. 112, 113, 115, 116.

whom the Speaker could issue out the warrants.[1] The Lower House declared that all they wished was that the Assembly, having begun with four members from each county, should end with four. To this the Proprietor answered that the act for election of burgesses, with four delegates from each county, was to apply only to future Assemblies (this was still the Assembly of 1676), and he had, moreover, disapproved of that clause. The Lower House, he said, was a sufficiently full house.[2]

The Lower House now drew up an act for the election of delegates, in which they yielded to the reduction of two from each county, but provided that in case of any vacancy by death or otherwise the Speaker should direct a warrant to the Secretary, who should then issue a writ for a new election. With this the Upper House refused to concur, but insisted on the rights of the Proprietor. The Lower House insisted that it was the privilege of the House that the Speaker should issue such warrants.[3] The Proprietor expressed his surprise that the Lower House should claim a power that was not practiced in Virginia or in any other of his Majesty's colonies. It was impracticable; the King had power to dispose of his conquests as he pleased, and in granting the Proprietor his charter had given him the power to enact laws. Accordingly he had propounded a way for the settlement of future Assemblies, but would issue writs, this time only, for the filling of the Lower House with four delegates from each county.[4]

The Lower House now expressed its grief that the Proprietor should wonder that its members asserted their rights and privileges as coming from England rather than from imperfectly constituted colonies; it was their birthright by the words of the charter. If the word "conquest" meant that they were subject to arbitrary laws and impositions, they took leave to believe that they were not his lordship's

[1] III. Assem. 114.
[2] III. Assem. 118, 119.
[3] III. Assem. 119, 120, 121, 122, 123.
[4] III. Assem. 124.

words, but the result of strange, if not evil, counsel. By the charter his lordship had sufficient rights and prerogatives, and the King had reserved to the people the rights and privileges of Englishmen, and this was all they insisted upon. If the Proprietor would issue the writs as he had said, the Lower House would proceed to business.[1]

The Upper House disclaimed any idea of likening the freemen of the province to a conquered people. It seemed for a time as if nothing would result, the Upper House trying to kill the affair by messages and disputes. The Lower House, however, refused to transact any business until the writs were actually issued, and showed considerable distrust of the good faith of the Proprietor. In the end they gained their point.[2] At the close of the session, however, the Proprietor declared his dissent to the election law of 1678.

Coode's case was again taken up, the Lower House refusing to unseat him for mere accusation of breach of peace, saying that only treason, felony and refusing to give security for breach of peace could unseat a member. The Upper House insisted that Coode had refused to give security, upon which the Lower House demanded the evidence. The Upper House declared that he could only be tried at the Provincial Court, but sent the evidence, which the Lower House refused to consider sufficient. Coode retained his seat.[3]

The act now passed for the regulation of the militia for the better defense and security of the province differs but little from previous ones. It occupied much of the Assembly's time. The Lower House talked much of its privileges, and failed to raise as much money for the Indian war as the Proprietor wanted.[4] This made the Proprietor angry.

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[1] III. Assem. 125.

[2] III. Assem. 126, 128, 129, 130, 131, 132, 133, 134.

[3] III. Assem. 135, 136, 137, 138, 139.
The Lower House requested the Proprietor to appoint a sergeant-at-arms for them. III. Assem. 115.

[4] III. Assem. 163, 170, 172, 175, 178, 180, 188.

The Lower House tried, but without success, to get an act passed for the confirmation of the laws. The Upper House declared useless the first part of the act, by which laws passed by the Assembly and assented to by the Proprietor could only be repealed by consent of the Assembly. The latter part of the act, by which the Governor's assent to a law was made binding on the Proprietor, was declared dangerous for the rights of the Proprietor. Neither the Governor of Virginia, nor William Penn in Pennsylvania, nor yet the Lord Lieutenant of Ireland, had any such power.[1] The Lower House answered that by the first part of the act it desired that the laws made at the last session (1678), which they held still to be in force, might not be repealed or disassented to without its consent. It denied that the latter part of the act was dangerous for the Proprietor or that the precedents quoted held good for Maryland. It also declared that "Nothing can or ought to be Satisfactory to us, or the Freemen of this Province (whom we Represent) unless we are Ascertained of the Validity force and Continuance of the Laws of this Province under which we live, and from whence we Expect protection and Safety and to the Enacting of which we have been and Still are Lyable to So much Trouble & Expence."[2] The Lower House tried in vain to get the consent of the Upper House to this act, nor did a petition addressed to the Proprietor have any better result. The Proprietor promised, however, that in the future, during his absence from the province, he would have his assent or dissent published in the province within eighteen months after the passage of any laws.[3]

Another effort was made by the Lower House to have an act passed for the relief of the Quakers, but it was again defeated by the opposition of the Proprietor.[4] An attempt of the Lower House to relieve ships built in the province from the payment of port duties was likewise defeated.[5] An

[1] III. Assem. 152.
[2] III. Assem. 160.
[3] III. Assem. 175, 178, 181, 182.
[4] III. Assem. 174, 179, 184.
[5] III. Assem. 144, 145.

act was passed by which any white woman servant who should intermarry with a negro should become free immediately, and all the issue of such marriage should be free; but the priest or magistrate who performed the marriage was to be fined 10,000 pounds of tobacco. Through the efforts of the Upper House[1] it was added that the master or mistress of the woman should be fined 10,000 pounds of tobacco.[2] This act shows that such marriages were contrived by the masters, who then, by a former act, retained the woman in service during life, as also her issue.

Another important act, extending the powers of the county courts, was passed this session.[3] All cases of larceny not exceeding 1000 pounds of tobacco in amount were to be judged in the county courts by a jury trial if the case was a first or second offense. The punishment to be fourfold the value to the person injured, with whipping or pillorying, or both, as the judges thought fit. The punishments inflicted by the laws of England, and followed in Maryland, were declared to be too severe for the province.

Before the Assembly had been prorogued the Proprietor issued an ordinance concerning elections. It was the ordinance of September 6, 1681, which is often mentioned afterwards.[4] By this ordinance election writs were to be issued from the Court of Chancery to the sheriffs, directing the election of two delegates from each county or chartered city. In case of a vacancy by death, application was to be made to the Secretary to have an election writ issued from the Chancery Court. No sheriff was to be elected. Having settled this matter, the Proprietor next made a "Declaration in relation to his proceedings in defense of the Province," which was nothing but a complaint of the last Assembly and its demand for "imaginary privileges" and a denunciation of its proceedings.[5] He intended perhaps to influence the next session of the Assembly.

The November session accomplished but little. The act of

[1] III. Assem. 177. [2] III. Assem. 203. [3] III. Assem. 201.
[4] Council Book, 1677-1683, 247. [5] Council Book, 1677-1683, 247.

1676 establishing the perpetual laws had itself been made a temporary law by the reviving act of 1678. The Proprietor, after a struggle with the Lower House, now procured its repeal.[1] This session revived[2] the act against divulgers of false news. The Proprietor declared that in the future he was resolved to publish the proceedings of all Assemblies, for the satisfaction of the people of the province.[3]

Fendall, Coode and Godfrey were now tried.[4] In Fendall's trial it was evident that the judges did all they could to obtain a verdict of guilty, but the jury only found him guilty of speaking several seditious words, without force or practice, and "if the Court thought him guilty of breach of the Act of Assembly, it did; and if not, it did not." Of course the court thought him guilty, and he was fined 40,000 pounds of tobacco and banished forever from the province.

The English law of treason was applied in this case. The accused was not told of what he was accused, the Attorney-General informing Fendall that every man accused is presumed to know what he had done. To the most serious charge made against him, Fendall pointed out that, contrary to both English and Maryland law, there was only one witness.[5]

Coode was acquitted by the jury, but Godfrey was found guilty of trying to take Fendall from prison and was sentenced to be hanged. The sentence was, however, commuted to life imprisonment. Coode was a justice of St. Mary's County Court and Godfrey a justice of Charles County Court. In the Council Proceedings the evidence against Fendall, Coode and Godfrey may be found.[6] God-

[1] III. Assem. 226, 227, 228, 233, 235, 237, 238, 247.
Fees as usual were considered and limited (III. Assem. 244, 255), but an act relating to the Land Office was rejected by the Proprietor. III. Assem. 234, 240, 243.

[2] III. Assem. 245. [3] III. Assem. 221. [4] III. Assem. 313, 330, 332.

[5] The jury was told by the Chancellor that it was judge of the facts and not of the law.

[6] Council Book, 1677-1683, 208, 209, 210, 211, 212, 218, 219, 220, 221, 222, 226, 262, 263, 278, 284, 292.

frey is seen to have done but little, and the popularity of Fendall and of Coode is manifest.[1] Godfrey was placed in irons.[2] The arrest of Fendall's brother Samuel was ordered, but it cannot be said that he was arrested.[3]

Arrests for seditious speeches continued for some time. A plot was reported by which the Proprietor, the Chancellor and the Secretary were to be killed, but it does not seem to have been attempted.[4] Fendall went to Virginia, and the Proprietor wrote that Fendall was the most likely person there to stir up a rebellion of the discontented party, and if he had caused a rising in Maryland, Virginia would not have remained quiet.[5]

The Proprietor had been accused in England of giving most of the offices to the Catholics. He now sent a list of the officers of the province with a statement of their religion.[6] This was followed by a declaration signed by twenty-five Protestants, nearly all office-holders, that they had observed "his Lordshipp's favours impartially distributed, and Places of Honor, trust and profit conferred on the most qualified for that purpose & service without any respect or regard had to the religion of the participants."[7]

The manner in which these signatures were obtained was as follows. When the Assembly of April, 1682, was ready to dissolve, the Proprietor presented to the members of the Assembly a declaration in vindication of himself and his government. He himself had prepared the paper and he asked those present to sign it. To have refused to do so would have been difficult, embarrassing and dangerous.[8] Signatures were thus obtained. Many of them were of office-holders and really had little weight. As a matter of fact, nearly all the important offices were held by members

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[1] Council Book, 1677-1683, 222, 224, 226, 274, 275, 277.
[2] Council Book, 1677-1683, 293.
[3] Council Book, 1677-1683, 275, 276, 277.
[4] Council Book, 1677-1683, 279, 280, 282, 296, 305, 306, 336, 348.
[5] II. Council, 351. [6] II. Council, 300, 309. [7] II. Council, 353.
[8] III. Assem. 314.

of the Proprietor's family, who were for the most part Catholics. In the province the Protestants far outnumbered the Catholics, and if only half of the officers were Catholics, it seemed monstrous to the Protestants at a time when the Popish plots were agitating all England.

Lord Baltimore now began his quarrels with the king's collectors of customs. He charged Rousby, who had called him a traitor, and Babcock with insolence, fraud against the king's customs, and breach of the laws. The collectors, on their side, charged Lord Baltimore with obstructing them in performance of their duties, and urged that he only wished to replace them with Diggs, his wife's son-in-law, or with Philip Calvert, who had married Jane Sewall. Indeed Lord Baltimore did make application on their behalf. Rousby was accused of treason, of lewdness and debauchery. He was said to have left the province contrary to the law regulating departures from the province. This last charge seems abundantly disproved.[1] Babcock died early in the dispute, but Rousby was to die by the hand of a cousin of the Proprietor, and by his death Rousby aided in the overthrow of the Proprietor's government. Through the whole dispute the Proprietor seems to have been in the wrong. The impression is left upon us that he wilfully misrepresents facts. At the end of this first stage of the dispute he was fined £2500 by the king.[2]

The Assembly met again in April, 1682. It was mainly concerned in passing several acts placing bounties on the production of hemp and flax and the manufacture of linen and woolen cloths within the province.[3] An act was passed to encourage tillage; corn, wheat, oats, barley, rye, peas, pork, beef and bacon were made legal tender for all debts, except the Proprietor's rents and the public levies.[4] The reason for these laws is found in the disturbance which

[1] II. Council, 295, 296, 297, 298, 299.

[2] II. Council, 274, 276, 278, 280, 286, 288, 296, 301, 302, 303, 305, 306, 308, 309, 334, 343, 361, 363, 364, 368, 369, 370.

[3] III. Assem. 274, 276, 296, 300, 324, 325. [4] III. Assem. 321.

arose in Virginia about this time, when a great deal of tobacco was cut. There was popular discontent with the low price, but a cessation in the planting of tobacco was desired neither by the king nor the Governor of Virginia nor the Proprietor, for all of their revenues were increased by increased exports.[1] The Lower House procured the passage of an act relieving ships owned in the province from the port and anchorage duty.[2]

An election was held and a new Assembly met in October, 1682. By the writs issued, only two delegates were elected from each county. The Proprietor declared to the Assembly that this was "according to the Undoubted rights, Priviledges, and Powers of my Charter."[3] The Lower House said it had been instructed by the freemen to make provision that they be restored to their former right of electing the accustomed number of delegates from each county, and asked the Proprietor that a bill might be passed directing that all writs for the future should require the election of two, three or four delegates for each county, at the choice of the freemen.[4] This request the Proprietor refused.[5] The Lower House, however, passed such a bill and sent it to the Upper House, which refused to do anything with it until the act establishing towns was passed by the Lower House. As the Lower House would not pass that measure, the bill died.[6] The act for the establishment of towns, called an "act for the advancement of trade," was not passed by the Lower House, though the Upper House repeatedly

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[1] II. Council, 355, 356, 357. The power of the county courts to levy their expenses upon the counties was limited to 1000 lbs. tobacco for the larger, and 600 lbs. tobacco for the smaller counties for each sitting of the county court. III. Assem. 322.

[2] III. Assem. 273, 274, 276, 291, 297, 323.

The desire of the Lower House was to have the act for the killing of wolves made a temporary law, which was the cause of much trouble later. III. Assem. 296, 297, 298. The expenses of the delegates were to be borne by the province, and not by their respective counties. III. Assem. 318.

[3] III. Assem. 334. [4] III. Assem. 345, 407. [5] III. Assem. 416, 455.

[6] III. Assem. 460, 465, 480, 418, 485, 430, 434.

urged its passage.[1] The Lower House voted that its members alone were representatives of the freemen and that the expenses of the Upper House should not be paid by the public levy.[2] The impeachment of Jacob Young, which was not finished, occupied much of the Assembly's time.

In 1683, Henry Darnall, a cousin of the Proprietor, and William Diggs, who had married Elizabeth Sewall, stepdaughter of the Proprietor, were commissioned Judges of the Probate Court and Keepers of the Great Seal. Appeals to the Governor were allowed from their decisions.[3] Thus a separate and distinct Probate Court was established. At the same time Nicholas Sewall, the stepson, and John Darnall, a cousin of the Proprietor, were commissioned Secretaries of the Province, dividing this office for the first time.[4]

The Assembly met again in 1683. The Lower House immediately protested against a sheriff sitting as a member, and obtained the election of a new member in his place.[5] The Secretaries had refused to issue the writ for the election upon a warrant signed by the Speaker, and only complied upon receiving an order from the Proprietor. The Lower House now prepared a bill for the election of burgesses similar to the measure presented to the Upper House at the previous session. The Upper House refused to consider the bill, saying the matter had been settled by the Proprietor's ordinance of September 6, 1681.[6] The Lower House, however, insisted on having the bill, which had been sent to the Upper House, acted upon. The latter in turn insisted that the bill establishing towns should be passed

[1] III. Assem. 350, 352, 358, 372, 379, 385, 410, 412, 419, 422, 424, 426.

[2] III. Assem. 373, 419. The Lower House was also very tenacious of its privileges and refused admission to members of the Upper House wearing their swords. III. Assem. 356, 358, 409, 414, 416. The Proprietor settled the fees of the clerk of the Council, a thing the Lower House wished to do itself, as it had always insisted on doing. III. Assem. 401, 475.

[3] Lib. R. R. 188.

[4] Lib. R. R. 189.

[5] III. Assem. 451, 527, 529, 531.

[6] III. Assem. 452, 530.

by the Lower House. A long struggle ensued. The Upper House passed an election bill that was rejected by the Lower House, which in its turn prepared a new bill. Conferences were held and amendments proposed. The Proprietor insisted upon his prerogatives. The Lower House declared it did not wish to infringe upon them, but only wanted to have the manner of electing burgesses made certain and fixed. At the same time the House claimed that the right of assembly belonged to the freemen, not through any grant in the charter, but as the privilege of free-born Englishmen. The bad faith of the Upper House is apparent in its refusal to pass the bill after promising to do so as soon as the Lower House passed the bill for towns. Thus the election act failed. The Proprietor had conquered in his struggle to reduce the membership of the Lower House. Not until after the overthrow of the Proprietary government was the old number of four delegates from each county restored.[1]

The Proprietor wished above all things the act establishing towns to be passed. To understand the opposition to this act it must be remembered that any man with a water-front could have a landing of his own and load his tobacco directly from his plantation upon ships. By the act for towns no tobacco could be shipped except at these towns. Storage-houses were to be provided, and town officers of course received fees. To these towns the tobacco due from the tax-payers must be brought. The act was never fully enforced. The Lower House wished to name the places for these towns, but the Proprietor claimed that as his prerogative, and with entire justice, for it was especially mentioned in the charter. The Lower House got the provision attached that no one of these towns should have representatives in the Assembly until it had sufficient inhabitants to pay the expenses of such representation. In the attempt to obtain concessions from the Proprietor, such as the pas-

[1] III. Assem. 458, 460, 462, 470, 474, 478, 486, 491, 493, 496, 505, 513, 533, 541, 545, 548, 558, 563, 580, 583, 597.

sage of the bills for elections, and for levying war, by holding back this act for towns, the Lower House failed. The Proprietor called the members of the Lower House into the Upper House and made an angry speech, which produced the desired effect. The act for towns passed.[1] As regards legislation for bringing money into the province the Proprietor was not so fortunate. This act was taken up, but, as the Assembly wished the Proprietor's duty of two shillings per hogshead and port duties to be paid in the cheapened money, and gave the Proprietor nothing to offset his loss, the proposed measure was quietly dropped.[2]

The Assembly had met for this session at the Ridge, in Anne Arundel County. This was more convenient than St. Mary's, and the Lower House was much pleased. It tried to have not only the Assembly but the Provincial Court, the Secretaries and other provincial officers permanently established in Anne Arundel County. The Proprietor seemed to assent, on condition that fitting buildings should be erected, to which proposal the Lower House agreed.[3] A gift of 100,000 pounds of tobacco to the Proprietor by the Lower House was refused by him, for he perhaps thought it would make the change binding upon him.[4]

The Upper House sent an act to the Lower for the settling of the two shillings per hogshead duty upon the Proprietor and the heirs of his blood forever. To this the Lower House would not consent, but settled it on Benedict Calvert, the son of the Proprietor, during his life. The Proprietor, however, refused to assent to the act, which seems to have been changed in other respects also.[5] An act

[1] III. Assem. 459, 460, 465, 466, 468, 469, 479, 480, 488, 490, 491, 493, 496, 503, 539, 540, 541, 544, 545, 547, 548, 551, 552, 553, 554, 557, 563, 565, 578, 579, 580.

[2] III. Assem. 448, 474, 532, 544. The Lower House failed to pass an act for levying war. III. Assem. 480, 491, 496, 513, 575, 580, 597.

[3] III. Assem. 483, 495, 505, 506, 517, 587, 590, 594, 600, 602.

[4] III. Assem. 495, 515, 516, 582, 599.

[5] III. Assem. 512, 513, 519, 589, 590, 603. The common fear of the French is seen in a false rumor that twenty Frenchmen had

to "ascertain the validity of laws passed during the absence of the Proprietor" was rejected by the Upper House.[1] George Talbot, a cousin of the Proprietor, was at this time commissioned Surveyor General.[2]

The Calm before the Storm, 1684-1689.—The period next to be considered was one of comparative quiet. The Assembly gave way to the wishes of the Proprietor in most matters, but still showed its independence by its presentations of grievances and attempted passage of bills to remedy them. The government of the province, during this period, was in the hands of the members of the Council, who were called Deputy Governors. Nearly every one of them was a relative of the Proprietor. Every office of importance, with one apparent exception, was occupied by one of his relatives. James II. ascended the English throne early in this period, and without doubt his example influenced the Proprietor. The Proprietor's right to exercise the dispensing and suspending powers was openly maintained. Favor towards the Roman Catholic Church was more openly shown than ever before. Attempts to introduce Catholicism into Virginia were made by James II.[3]

In April, 1684, the Assembly met again. The Lower House passed an act for ascertaining the validity of the laws passed in the absence of the Proprietor, as it had done in previous Assemblies. By this act the Proprietor had to

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attacked an inhabitant of the province. III. Assem. 486, 487. An act of the Lower House to prohibit sheriffs or deputy sheriffs from being also deputy surveyors failed. III. Assem. 573.

[1] III. Assem. 508, 509, 510, 512, 589, 590, 594, 595, 596. The session ended with the Proprietor's refusal to confirm the act reviving the temporary laws because it included in the temporary laws the act for killing wolves, which had been made a perpetual act, and the Lower House would not omit it from the reviving act. III. Assem. 519, 520, 603, 604.

[2] Lib. R. R. 192.

Several provisions concerning land were made (Lib. R. R. 1; II. Council, 394), and the alienations of land were to be examined. Lib. R. R. 59.

[3] Burk's Virginia, Vol. II., 299; Cooke's Virginia, 300.

declare his disassent to a law within twenty months after its passage; a later veto had no force. The Upper House wished to extend this period to three years, whereupon the Lower House expressed its astonishment, for in 1681 the period of eighteen months was agreed upon, not only by the Upper House, but by the Proprietor also. The Proprietor settled the matter by declaring that he would not consent to any such an act.[1]

The "act for levying war" the Proprietor refused to consider, declaring he had suspended the law then in force, perhaps for his life; accordingly any new act was useless.[2] The attempts of the Lower House to pass a new "act for the punishment of certain offenses," by which the severe punishments prescribed by the old act were to be mitigated or abolished, were likewise defeated by the Proprietor.[3] A new act for taking the oath of fidelity and a new oath of fidelity were discussed. The Lower House amended the oath by adding the clause "Saving of our Allegiance to his Sacred Majesty," but finally rejected both measures, the other changes being objectionable.[4] The Proprietor declared that the members of the Assembly must take the oath of fidelity at the next meeting of the Assembly.[5] Thus it was the Proprietor, and not President Joseph, who originated the dispute of 1688 concerning the taking of the oath of fidelity.

The perpetual laws were carefully examined by the Assembly, which wished to make some alterations; but the Proprietor announced just what alterations he would consent to, and thus prevented any action.[6] He would not con-

[1] Lib. F. F. 708, 710; Lower House Journal, 1676-1702, 102, 106, 108.

[2] Lib. F. F. 701; Lower House Journal, 1676-1702, 95, 107.

[3] Lib. F. F. 708, 709; Lower House Journal, 1676-1702, 80, 85, 86, 103, 107.

[4] Lib. F. F. 718; Lower House Journal, 1676-1702, 80, 102.

[5] Lower House Journal, 1676-1702, 116; Lib. F. F. 719.

[6] Lib. F. F. 709; Lower House Journal, 1676-1702, 107.

sent to the re-enactment of the law of 1678, by which the laws of England were to apply when the laws of the province were silent, unless the Governor and Chief Justice should be allowed to decide whether those laws ought to be applied.[1] To this procedure the Lower House would not consent. The Lower House also declared the repealing act of 1678 to be in full force. These things caused the Proprietor to again declare his disassent to all laws passed in 1678.[2] The temporary laws were revived, which was the chief reason for the calling of this session by the Proprietor.[3]

The trial of a certain Carvil at this time for disrespect of the Proprietor is worth noting. Carvil was accused of saying that the Proprietor and his rogues had caused the death of Mrs. Coode; that the Council was composed of mere boys; that the Proprietor had promised the land for Chopticotown (which was located on a Proprietary manor); and other similar things.[4] It is well to remember that Mrs. Coode was the daughter of Thomas Gerrard, a former rebel against the Proprietor. If any action of the Proprietary government really hastened Mrs. Coode's death, it is easy to see that it would embitter Coode against that government.[5] Fendall, who had been banished, was reported to be seen, afterwards, in a ship in the Potomac. A search warrant was issued, but he could not be found.[6]

The Proprietor again declared in the Council his disassent to the laws of 1678.[7] He now prepared to go to

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[1] Lib. F. F. 709. [2] Lower House Journal, 1676-1702, 81, 115.

[3] The act establishing towns was supplemented and an act passed against excessive usury. The Lower House declared that persons obtaining naturalization must in the future pay the Speaker 1200 pounds of tobacco. Lib. F. F. 713; Lower House Journal, 1676-1702, 110. It may be noticed that the Lower House complained that the Secretaries took double fees. Lower House Journal, 1676-1702, 82.

[4] Lib. R. R. 12, 13, 14, 15, 16, 17.

[5] Carvil was tried upon another charge soon after this. Lib. R. R. R. 77, 78, 79.

[6] Lib. R. R. R. 112, 114. [7] II. Council, 405.

England. Benedict Calvert, his son, was appointed Governor, but as he was too young to govern, Deputy Governors were appointed. These were nine in number, seven of whom were relations of the Proprietor, including indeed the entire Council.[1] Coursey was named Chief Justice and Chancellor; the Council is called a Council of State.[2]

The Proprietor now resolved to establish a Land Office. Henry Darnall, William Diggs, Nicholas Sewall and John Darnall were named a Land Council.[3] As early as 1680 there had been a nominal Land Office, with John Llewellin in charge as Register,[4] but now the office was definitely established. Complete instructions were given to the Land Council. Henry Darnall and Diggs were to sign all warrants to which the Great Seal was necessary.[5] They were to have one-third the forfeitures of all vessels seized for breach of acts of Parliament,[6] and were to sign all acts of the Assembly as Keepers of the Great Seal.[7] They were appointed keepers of the forest and chief rangers, and empowered to seize all wild cattle and horses and sell them for personal benefit.[8] This Henry Darnall was also made Receiver General for the province.[9] The two Darnalls, Sewall and Diggs, seem to have had most of the powers of the government.[10]

The king's Collector of Customs, Christopher Rousby, was murdered in the autumn of 1684, by George Talbot, the Surveyor General of Maryland, and a cousin of the Proprietor. The murder was committed on board a king's man-of-war, and the captain took Talbot to Virginia to be tried and refused to deliver him to the Proprietary government. How such a trial by his relatives would have resulted is not hard to see, nor can the captain be blamed for refusing to surrender Talbot to be tried by such a court. Tal-

[1] Lib. R. R. R. 87. [2] Lib. R. R. R. 90, 91. [3] Lib. R. R. R. 93.
[4] Kilty's Landholder's Assistant, 108.
[5] Lib. R. R. R. 99; Kilty's Landholder's Assistant, 115, 116.
[6] II. Council, 406; Lib. R. R. R. 101. [7] Lib. R. R. R. 102.
[8] Lib. R. R. R. 81. [9] Lib. R. R. R. 103. [10] Lib. R. R. R. 108.

bot's wife went to Virginia and procured his escape. The Council then issued orders for Talbot's arrest, but the search was not vigorously pushed. Talbot lived for some time, quietly, and unarrested, in his own house. Finally he surrendered and was ordered to be sent to England, but Lord Baltimore procured his pardon from King James.[1] The Council appointed Diggs and Sewall King's Collectors of Customs, but this was bitterly opposed by Nehemiah Blackiston, the other King's Collector of Customs, who complained that they treated him with contempt and defrauded the king's customs. A new collector was soon appointed in Rousby's place and Blackiston was sustained.[2] During all the trouble the Council vigorously supported the prerogatives of the Proprietor, refused to try Talbot in any court held in the king's name, arrested any one who advocated that procedure, and refused to surrender him to the Governor of Virginia. This incident gave a more than seeming basis to charges of resistance to the English government which were made later against the Proprietary.

A new election was held, the writs being issued in the form prescribed by the Proprietor's ordinance of September 6, 1681.[3] When the Assembly met, the Deputy Governors tried to get the members of the Lower House to take the oath of fidelity, as the Proprietor declared should be done, but they refused.[4] Little was done at this session. An act was passed for the advancement of coins, but this act was not to affect the Proprietor's export duty of two shillings per hogshead of tobacco nor his quit-rents.[5] Vincent Lowe, brother-in-law of the Proprietor, had been appointed Sur-

[1] II. Council, 428, 436, 439, 453; Lib. R. R. R. 138, 142, 163, 177, 180, 181, 185, 187, 189, 197, 199, 201, 202, 214, 221, 222, 232, 239, 253, 255, 271.

[2] II. Council, 436, 520, 526.

[3] Lib. R. R. R. 244.

[4] III. Council, 62.

[5] The act for towns was amended and the temporary laws were revived. Many proclamations were made concerning the towns by the Council during this period, there being great discontent about them. II. Council, 449, 500, 502, 563; Lib. R. R. 207, 245.

veyor General,[1] and Henry Lowe, a nephew of the Proprietor, had been appointed Collector of Customs under Henry Darnall, the Receiver General.[2] William Joseph was appointed in 1688 a Deputy Governor and was to preside in the Council and Provincial Court.[3] The Assembly met again in November, 1688. President Joseph, perhaps by instructions of the Proprietor and certainly in accordance with the Proprietor's declaration of 1684, asked the members of the Assembly to take the oath of fidelity to the Proprietor.[4] The Upper House promptly took the oath, but the Lower House refused, as it had done in 1686.[5] It claimed it was a breach of its privileges and that it had never refused to take an oath such as put to the House of Commons in England, nor would its members take the oath until the Assembly had been prorogued, when they took it as private individuals and not as composing the Lower House.[6]

At President Joseph's request, the Assembly, urged on by the Upper House,[7] passed an "act for a perpetual commemoration and thanksgiving every 10th day of June for the birth of the Prince."[8]

The Lower House presented a list of grievances to the Upper: (1) That the collectors refused to take tobacco for the Proprietor's quit-rents and fines for alienations, as they were required to do by the act of 1671. (2) The Secretaries took fees not due them by law. (4) Laws passed by the Assembly and assented to by the Proprietor were dispensed with, whereas they should only be repealed by the consent of the Assembly. The Lower House asked in this complaint if the Proprietor was going to dispense with a certain law without an act of repeal. In Virginia there was great opposition to the veto power of the Governor.[9] (5) The

[1] Lib. R. R. R. 283. [2] Lib. R. R. R. 243. [3] III. Council, 41.
[4] Lib. F. F. 551. [5] III. Council, 62.
[6] Lib. F. F. 557. McMahon is wrong in saying that the oath was taken at the end of the session. McMahon's Maryland, 234.
[7] Lib. F. F. 574. [8] Lib. F. F. 550, 574. [9] Campbell's Virginia, 339.

Attorney General issued writs to the sheriffs by which persons were brought to the Provincial Court not knowing of what they were accused. (6) Press-Masters used their powers in time of peace.

The Upper House answered these grievances as follows: (1) The collectors should in the future take tobacco for the rents and fines for alienations. (2) An act should be passed explaining the law. (4) The Proprietor would only dispense with this clause for the present. (5) The cause of arrest should be known. (6) The government did not encourage such exercise of the powers of the Press-Masters. The Proprietor's dispensing power was upheld.[1] The Lower House passed an act regulating the Secretaries' fees, but Diggs and Sewall, the Secretaries, went to the Lower House and asked that the matter be dropped. They said that in the future they would not charge for the recording of proceedings until the following Assembly.[2] The Lower House asserted its rights in election affairs and asked that writs and returns be presented to it.[3] Among the members of the Lower House were Coode and Hawkins. The Upper House tried to keep them out of their seats, but was forced by the Lower to allow them the privilege.[4] It is not clear whether Clark, another elected member of the Lower House, was allowed by the Upper House to take his seat. Cheseldine was the Speaker.[5]

The Revolution of 1689.—Family interests had become too prominent. Nicholas Sewall, Henry Darnall, Vincent Lowe and Henry Lowe, all relatives of the Proprietor, were provided with offices and were Deputy Governors. Elizabeth Sewall first married Dr. Jesse Wharton, and after his death she married William Diggs, who accordingly was made a

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[1] Lib. F. F. 564, 588.

[2] Lib. F. F. 593.

[3] Lib. F. F. 551, 553, 557, 559.

[4] Lib. F. F. 559.

[5] The Upper House desired to make money the standard and measure of all trade, and resolved on a per diem payment for its members. Lib. F. F. 564, 571. The Assembly supplemented the act establishing towns.

Deputy Governor. Anne Sewall's second husband was Colonel Edward Pye, who, like her first husband Rozer, became a member of the Council and a Deputy Governor. Mary Sewall's second husband was a Virginian, and so did not hold office like her first. Jane Sewall had married Philip Calvert, who was now dead. Others who held office, through their family connections with the Proprietor or others, were Henry Brent, who was Examiner General,[1] by his marriage with Anne Calvert, the widow of Baker Brooke; Richard Smith, who had married a sister of Baker Brooke; Clement Hill, who had married the niece of Hatton, widow of Luke Gardiner, both of whom were much liked by the Proprietor; and Peter Sayers, whose wife was the sister of Richard Smith's wife. It is likely that most of the public offices were held by reason of family ties, but these cases are all the writer has knowledge of at present. The list includes all the larger offices, except that of Chancellor, to which Joseph was appointed on account of his knowledge of law.

On the other hand it should be noticed that Coode had married Susanna Gerrard, daughter of Thomas Gerrard,[2] and that Nehemiah Blackiston had married Elisabeth, another daughter of Gerrard.[3] Gerrard Slye, another relative (Coode's stepson indeed), was their agent in England. The struggle that was soon to occur is, in a certain sense, a family struggle.

Rumors of the invasion of England by William of Orange reached Maryland early in the year. The Council immediately ordered all the public arms to be prepared. A letter to the Proprietor required these arms to be distributed into "such hands as shall faithfully serve the King your Lordsp and the Country."[4] In the same letter Lord Baltimore was

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[1] II. Council, 542. [2] Chancery Lib. P. L., Fol. 755, 1093.

[3] Land Records, Lib. 3, Fol. 24.

It is interesting also to note that Henry Jowles and Kenelm Cheseldine were related.

[4] III. Council, 56, 65.

congratulated on having raised a troop of horse for King James. There can be but little doubt that there was a large party in Maryland favorable to William of Orange. The express declaration of the Council above-made shows that arms were not to be intrusted to members of this party. The English revolution of 1688 is sometimes thought to have been accomplished at one blow, but this is a mistake. Ireland was not conquered by William until 1691. Richard Talbot, Duke of Tyrconnel, who held the government of Ireland in 1688, held out for James II. In Scotland there was a long struggle made by James's adherents. Nor did the Tories in England remain quiet. Risings were repeatedly planned, but they came to grief. James, who fled to France, obtained aid from Louis XIV. and landed with French troops in Ireland in May, 1689.

That France, then the most powerful country in the world and the champion of Catholicism, would attack the English colonies by way of Canada was not only probable but it actually happened. Nor could it be supposed that the adherents of James in the colonies would offer much resistance to their allies the French. Lord Baltimore was an Irish lord and a Catholic. He was, moreover, related to the Talbots, and was intimate with the Tyrconnel Talbots.[1] It was but a few years previous to this that the Edict of Nantes had been revoked by Louis XIV. and the terrible dragonnades instituted. These facts were fresh in the minds of the colonists. In Maryland things had begun to approach a crisis. A treaty with the Indians had been renewed,[2] and this, in connection with the preparations for defense, began to excite suspicion. Rumors became rife of a plot between the Catholics and Indians to destroy the Protestants. It was said that large numbers of Indians had been actually seen attacking parts of the province. The public mind became highly excited. Arrests of divulgers of false news were frequent. These rumors were shown to be false by

[1] III. Council, 20, 22.

[2] McMahon, 236.

men who soon afterwards joined the movement against the Proprietor. Nor were these rumors confined to Maryland. In Virginia it was said that the Papists had allied themselves with the Indians to massacre the Protestants. Massacres were reported, and John Waugh, a minister of the Established Church, spread these reports over Stafford County, which was very much excited. Many armed bands were formed.[1]

In April, 1689, was formed "An Association in arms for the defense of the Protestant Religion, and for Asserting the Right of King William and Queen Mary to the Province of Maryland and all the English dominions."[2] John Coode, son-in-law of Thomas Gerrard, was the head.[3] As time went on and the colonists learned of the state of affairs in England and saw the unwillingness of the Council to proclaim William and Mary,[4] men who had hitherto supported the government joined the Association. The old rumors of threatened invasion of French and Indians in league with the Catholics were renewed.[5] The Association, with scarcely any resistance, overthrew the Proprietary government, August 1, 1689. The Council was able to raise but few troops, and these, the officers excepted, were not willing to fight. On July 25, 1689, the Association issued a declaration, stating the reasons for its armed uprising.[6] It has been said that these complaints had never been made before, but in the light of our review of the history of the province it is seen that the charges are abundantly justified.

The complaints were as follows: That in 1676, although

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[1] Campbell's Virginia, 341; Burk's Virginia, 304.

[2] Chalmers' Political Annals, 373.

[3] McMahon erroneously states that Coode had been convicted of treason and pardoned by the Proprietor. He was acquitted by the jury in his trial, as has been seen.

[4] Is it not a little doubtful that Lord Baltimore really wished the proclamation made?

[5] The French and Indians did begin to attack the English colonies this year.

[6] III. Council, 101.

four delegates from each county were elected to the Assembly, as had been the custom, only two were summoned to the Assembly by the Proprietor. All four were summoned to the Assembly of 1678, when many good laws were made; but the Proprietor pronounced many of these null and void, though they had been assented to in his name by the Governor and he himself had been governed by them. For the election of delegates to the next Assembly the writs issued directed the election of only two from each county, contrary to the act of Assembly for election of delegates. The most important law passed in that Assembly was dispensed with by the Proprietor, with the exception of the duty of three pence per hogshead imposed by it. The courts accordingly interpreted the laws to suit the pleasures and desires of the Proprietor. All laws might be dispensed with or suspended, thus placing the liberties and property of the inhabitants at the arbitrary disposition of the Proprietor. It must be admitted that these grievances were real and had often been complained of before. The exercise of the dispensing and suspending power by the King of England was declared illegal by the English Bill of Rights of this same year, as was also the interference with elections.[1] The imposition of excessive fees, and contrary to law, was another complaint, and for this there was no redress, since the judges were the very officers who exacted the fees. It has been noticed that the Provincial Court was composed of all the chief officials.

Other grievances were:

The imposition of illegal fees, contrary to the charter, which provided that no taxes should be levied without the consent of the freemen.

The imposition of the like fees upon vessels owned in the province, contrary to an act of Assembly.

The seizure of Protestants by armed forces of Papists without warrant or cause of commitment. Of this nothing

[1] Taswell-Langmead's English Constitutional History, 682.

is further known, but perhaps it refers to certain alleged divulgers of false news and the writs issued by the Attorney General.

The frequent pressing of men, houses, boats, provisions and other necessaries by press-masters in time of peace. This complaint was made, as were others, in the Assembly of 1688.

The perpetration of not only private but public murders of Protestants by Papists, crimes connived at and tolerated by the chief authority. This charge refers, perhaps, to the murder of Rousby by Talbot, for it is mentioned in a later charge.[1]

The bad treatment given to the King's Collectors of Customs, as in the case of Rousby and Babcock, was mentioned to show how little regard was paid to the English Government.

Any one upholding the sovereign power of the Crown was looked upon as a traitor and incurred the ill-will of the government. This charge was undoubtedly true.[2] Allegiance to the Crown was little thought of, but allegiance to the Proprietor was everything. The *Jus regale* was constantly exercised by the Proprietor and was severely felt.

Churches and chapels, which, by the charter, should be consecrated to the Church of England, were devoted to the use of the Roman Catholic Church. President Joseph and the councillors were Catholics. It was charged that the Catholics were trying to get possession of children in order to proselyte them.[3] Henry Coursey, years before, had accused Charles Calvert of trying to proselyte a boy.[4]

The declaration stated that the Deputy Governors not only prevented the proclamation of William and Mary, but prayers were said for the success of the Popish forces in Ireland and for the French designs against England, while the right of their Majesties to the crown of England was pub-

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[1] III. Council, 218.
[2] Lib. R. R. R. 147.
[3] Lib. F. F. 592; III. Council, 32.
[4] I Calvert Papers, 383.

licly disowned. This charge was, in all probability, well grounded. The same things were done in England at this very time by many persons not Catholics.

The declaration then stated the danger impending over the province from the French and Indians, who were in league with the Papists. This danger seemed very real to men in those times.

The whole declaration was sent to the King. It can hardly be doubted that many grievances were not expressed at all. The hopes of the lower classes were most likely to have been aroused by the leaders of the movement, but, if so, found no sympathy or fulfillment afterward. The things complained of in the declaration were nearly all remedied. These charges were subsequently amplified[1] and repeated:

"Appointing none but Irish Papists and his owne relacons for the most part to have the Chiefe Governing authority."

Encouraging the Roman Catholics. The priests claimed ecclesiastic liberties and privileges of the Church of Rome by act of the first Assembly.

Non-provision of support for a Protestant clergy.

Violating the freedom of elections.

Prevention of the sitting of elected delegates by summoning only a select number.

Making laws without consent of the Assembly, and extending them to the estates of the inhabitants.

Assuming a power to assent or disassent when, and to what laws he pleased, that are made in his absence from the province.

Assuming a power to repeal laws by proclamation.

Assuming a power to dispense with laws made that had received his own personal assent.

Assuming the "royall stile dignity authority and prerogative."

Allowing the Attorney General upon his own authority to

[1] III. Council, 215, 217, 219.

issue writs to the sheriffs for the arrest of certain persons, who were left in ignorance of what they were charged.

Allowing the exaction of illegal fees from masters of ships.

Allowing the exaction of an illegal export duty of three pence per hogshead of tobacco.

Allowing the Secretaries to take illegal fees.

Allowing press-masters to exercise their powers in time of peace.

Assuming to be judges of matters of fact.

Imposing upon the Lower House of Assembly in 1688, against their privileges, the oath of fidelity to the Proprietor, in which there was no reservation of allegiance.

Deputy Governors were accused of allowing the Receiver-General to exact money for quit-rents and alienation fines contrary to law.

Other well-grounded complaints against the Proprietary and his deputies were as follows:

The erection of new offices and officers, with unreasonable and excessive fees, without act of Assembly; for example, the Examiner General and Attorney General for the province and those for the counties, and the Clerk of the Council. The regulation of fees was a right always claimed by the Assembly.

The granting and giving away of lands as escheats before they were found to be such by inquisition.

The disposing and arbitrary selling, for money or otherwise, of places and offices of trust to persons incapable of managing the same, whereby offices are unduly managed and illegal and excessive fees extorted. That such charges were literally true is seen in a sale of the Deputy Surveyorship of Calvert county for 500 pounds of tobacco,[1] and in the admitted incompetence of certain appointees for sheriff.[2]

Nor can there be dispute as to the justice of the following complaints, which are the last we shall consider:

That all the Judges at Common Law, Chancery, Probate

[1] Lib. R. R. R. 237.

[2] II. Council, 566; III. Council, 16.

of Wills, and of the Upper House of Assembly, erected by Lord Baltimore, were one and the self-same persons and nearly allied. Little justice, therefore, was to be expected when any of them are sued, and as little redress upon any just appeal from them in one capacity to the same persons in another capacity.

And for the same reason the penal laws made against officers for extorting unjust and illegal fees can take little or no effect, for the said persons actually possessed themselves, or by their deputies, of all offices of profit within the province and they themselves were the judges therein.

That many of these grievances really existed has already been shown. That in the very year when liberty made such a great advance in England, the free-born Englishmen of Maryland should attempt to redress their own grievances is not passing strange. To attribute this revolution in Maryland to opposition to Catholicism or to the ambition and revenge of Coode and a few others is to attribute it to insufficient causes, although they doubtless were factors in the movement.

After the Association had taken all power into its hands, many addresses were made to the King by the inhabitants. It can be easily ascertained by examining the commissions issued in 1688 that a large part of the signatures to the addresses made on behalf of the Proprietor were those of office-holders under the Proprietor who had now lost their offices. The addresses on behalf of the Association had many more signatures. One of Coode's answers mentions the rebellion of 1676 and other disturbances to show that continual peace and concord had not existed previous to 1689.[1]

The statements that are generally used to condemn the Association are those of Henry Darnall, Taney, Charles Carroll, Peter Sayer and Richard Smith. Henry Darnall was a cousin of the Proprietor, and his religion and position in the government have already been seen. Taney had

[1] III. Council, 225.

been sheriff of Calvert County since 1685. Charles Carroll was a Catholic. He had only arrived in Maryland in 1688, and had been appointed Attorney General at a salary of 12,000 pounds of tobacco. Peter Sayer had been sheriff of Talbot County. He was related to Richard Smith, and was a strong adherent of James II. for years after this time.[1] Richard Smith was another beneficiary of the Proprietary government and a relative of the Calverts.

The leaders of the Association have been abused as rogues and law-breakers, but they were really patriots. Nearly all had been county justices. Cheseldine had been Speaker of the Lower House of Assembly. Jowles had held a high military command. Blackiston was King's Collector of Customs. Warren, Beal and Addison were all men of some note. Indeed, even Coode, who had been justice of St. Mary's and delegate to the Assembly, can scarcely have been such an abandoned wretch as he has been described. The charge of irreligion is about the only one made against him that will bear examination. That he incurred the dislike of Nicholson, a man universally hated, is not at all strange. Many of these very men sat in the Assembly for years after this time. They held office both before and after 1689. They cannot have been a set of rascals and profligates.

The actual causes of the revolution in 1689 have now been for the first time shown. Their existence during a long period anterior to the revolution has been demonstrated, together with their growth, the previous disturbances caused by them, and their resistless force when the favorable moment came for the people to overthrow the Proprietary government.

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[1] III. Council, 560, 562.

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OF

JOHNS HOPKINS UNIVERSITY STUDIES

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